

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

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In Re:	)	
	)	Case No. 08-61570-11
Yellowstone Mountain Club, LLC,	)	
	)	
Debtor.	)	

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THE HON. RALPH B. KIRSCHER, presiding

TRANSCRIPT OF PROCEEDINGS

Butte, Montana  
February 10, 2009

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1 YELLOWSTONE MOUNTAIN CLUB BANKRUPTCY

2 BUTTE, MONTANA

3 - - -

4 BE IT REMEMBERED THAT this matter came on for hearing  
5 on February 10, 2009, in the United States Bankruptcy  
6 Court, District of Montana, The Hon. Ralph B. Kirscher,  
7 presiding:

8  
9 The following proceedings were had:

10  
11 THE COURT: This is the time set for various  
12 matters in the Yellowstone Club case, 08-61570. We do have  
13 a number of matters. I'm not sure if any have been  
14 resolved, but let me name them, and we'll proceed.

15 Objection to Debtors' motion to obtain increased  
16 postpetition financing and objection thereto; Credit  
17 Suisse's amended motion for Rule 2004 exam to be  
18 reconsidered and objection thereto; Credit Suisse's  
19 emergency motion for order compelling immediate  
20 commencement of a marketing process and objection thereto.

21 Oh, just a moment. I guess we'd better wait for  
22 our recorder.

23 THE CLERK: It's being recorded.

24 THE COURT: Is it being recorded?

25 THE CLERK: Yes.

1 THE COURT: Okay. Credit Suisse's emergency  
2 motion of prepetition lenders for order authorizing  
3 prepetition lenders to seek expedited discovery and  
4 objection thereto; Credit Suisse's emergency motion of  
5 prepetition lenders for appointment of examiner and  
6 objection thereto; motion of Debtors for approval of  
7 bidding and solicitation proceedings regarding proposed  
8 sale of 100 percent of the equity interest in the debtor  
9 and objections thereto by ad hoc group of Class B  
10 unitholders, Highland Capital Management, Credit Suisse,  
11 the United States Trustee, Normandy Hill Capital, LLP, and  
12 Mr. Blixseth; and motion of prepetition lenders pursuant to  
13 Bankruptcy Rules 7026, 9014, and Local Rule 9014-1 for  
14 order authorizing prepetition lenders to seek expedited  
15 discovery and objection thereto; and then creditors  
16 committee response to the various pending issues pending  
17 before the Court for today.

18 There is also an Adversary 09-00010, creditors  
19 committee vs. Edra Blixseth and BLX Group; motion for  
20 temporary restraining order and preliminary injunction.

21 I hope I've covered all the pending matters.  
22 Mr. Patten, do you recall anything that I haven't covered?

23 MR. PATTEN: No, Your Honor, but we actually have  
24 resolved one of them.

25 THE COURT: Just one?

1 MR. PATTEN: And that was the debtors' motion to  
2 increase DIP funding.

3 THE COURT: Okay.

4 MR. PATTEN: And there was a stipulation filed  
5 some time ago, and I believe the -- almost positive the  
6 order approving it has been issued.

7 THE COURT: You know, and I recall that that had  
8 taken place, but I -- because the emergency in Paris.

9 MR. PATTEN: Yes.

10 THE COURT: We did that like on a Friday, or  
11 something.

12 MR. PATTEN: Yes.

13 THE COURT: Okay, so that's off.

14 MR. PATTEN: And, Your Honor, I believe the issue  
15 with regard to the temporary restraining order regarding  
16 Edra Blixseth has been resolved, as well.

17 THE COURT: And BLX Group?

18 THE WITNESS: And BLX Group.

19 THE COURT: Has been resolved?

20 UNIDENTIFIED SPEAKER: Yes, sir.

21 THE COURT: Okay.

22 UNIDENTIFIED SPEAKER: (Inaudible, out of range  
23 of microphone.)

24 THE COURT: And the stipulation has been filed?

25 MR. COSSITT: Your Honor, I've got it here on the

1 laptop in PDF and Word format, and I can submit it --

2 THE COURT: Okay.

3 MR. COSSITT: -- later today or whenever I can  
4 get a connection.

5 THE COURT: Okay, very good. Thank you.

6 MR. COSSITT: Thank you.

7 THE COURT: I'll take that off, then. Anything  
8 else?

9 MR. CHEHI: Your Honor --

10 THE COURT: (Inaudible, talking over each  
11 other) -- resolved.

12 MR. CHEHI: Your Honor.

13 THE COURT: Mr. Chehi.

14 MR. CHEHI: On the last matter, if we could just  
15 make sure that we get a copy of that stipulation, or  
16 whatever, resolving the Blixseth TRO before it's submitted  
17 to the Court so we can comment on it or at least review it.

18 THE COURT: Are you a party?

19 MR. CHEHI: Well, we are a part of the  
20 enforcement action, I believe, on the, on the notes, Your  
21 Honor. We have been given some authority to participate  
22 with the committee in the enforcement of the notes, and the  
23 like. And I believe --

24 THE COURT: But this is by the creditors  
25 committee to restrain any transfers, as I recall. Correct?

1 MR. CHEHI: Or leading up on the BLX or Blixseth  
2 Group property, yes.

3 THE COURT: Well, I'm not sure if you're a party  
4 to it, is what I'm trying to say, if it's creditors  
5 committee.

6 Do you have comment?

7 MR. BECKETT: Your Honor, the only party to have  
8 made an appearance in that case is the committee. There's  
9 one other creditor that made an appearance, and I don't  
10 recall who it was right now. A secured creditor made an  
11 appearance in the adversary proceeding; Credit Suisse did  
12 not. I think that if we can get a -- I don't know if we  
13 can have a printout. We're happy to have them -- to share  
14 it with them or anyone else who wants to look at it, but --

15 THE COURT: I have absolutely no problem - in  
16 fact, I would encourage them reviewing it and sharing it -  
17 but I don't see where they have a "yea" or "nay" or on it.

18 MR. CHEHI: I'm not saying we do, Your Honor.

19 THE COURT: Okay.

20 MR. CHEHI: But we're a party in interest, and  
21 the matter was active, and we understood that it was going  
22 forward today. And, you know, we are interested in it. I  
23 believe we received copies of it from committee counsel,  
24 and we discussed it with them even before they filed it --

25 MR. BECKETT: Even before we filed it.

1 MR. CHEHI: -- as part of the collection action.  
2 And so we are hoping to continue to play a meaningful role,  
3 even as just an observer from time to time and as a party  
4 in interest in it.

5 THE COURT: Well, I know you'll be observing all  
6 of the proceedings. Just as soon as I see the stipulation,  
7 though, I may approve it --

8 MR. BECKETT: Thank you.

9 THE COURT: -- if it's been agreed to by the  
10 parties.

11 MR. BECKETT: We'll make every effort to make  
12 sure that parties who want to look at it --

13 THE COURT: Make sure anybody who wants it has a  
14 copy.

15 MR. BECKETT: They may only -- it may, it may be  
16 on a screen because I think it's going to go from  
17 Mr. Cossitt's screen into the system.

18 THE COURT: I would think so.

19 MR. BECKETT: But we will do that, and we will  
20 file it. Thank you.

21 THE COURT: Thank you, Mr. Beckett.

22 Mr. Patten.

23 MR. PATTEN: Just so the record's clear, Your  
24 Honor, Ms. Blixseth agreed to an order. And so there's no  
25 stipulation, per se, but there is an agreed-upon order that

1 will be submitted to the Court.

2 THE COURT: Okay, okay. Do you have any  
3 preference as to the order in which we take up some of  
4 these matters?

5 What's this about the amended motion for a Rule  
6 2004 exam be reconsidered? What's the issue there? I  
7 think this is Credit Suisse's motion --

8 MR. HURSH: Yes, Your Honor.

9 THE COURT: -- a Rule 2004 exam.

10 Mr. Hursh.

11 MR. HURSH: We had actually objected and  
12 requested the reconsideration.

13 THE COURT: Oh, for CrossHarbor. I'm sorry.

14 MR. HURSH: Yes.

15 THE COURT: I'm sorry, yes.

16 MR. HURSH: Yes, Your Honor --

17 THE COURT: Okay.

18 MR. HURSH: -- for a couple of reasons that are  
19 in the papers. And if you would like to proceed with that,  
20 I certainly can do so at this time. I did, though -- post  
21 filing of those papers, there was a subsequent motion for  
22 an examiner. And depending on how that issue was resolved,  
23 it seems that that may, in fact, resolve the underlying of  
24 the 2004 exam.

25 THE COURT: Okay. Is there concurrence there to



1 get the examiner first, Mr. Chehi?

2 MR. CHEHI: I don't think we can, you know, talk  
3 to that. Perhaps we should, you know, focus on the  
4 examiner motion. If Your Honor would like to do that, I  
5 think that the examiner motion implicates discovery issues  
6 and, in fact, the examiner motion has been brought on  
7 because the lack of cooperation in discovery. And, you  
8 know, we have some views on both of those matters. And  
9 however Your Honor would like to proceed, we're happy to  
10 proceed.

11 THE COURT: Let's proceed with the examiner  
12 motion, then. I take dim views of these kinds of hassles  
13 and failure to provide information. I guess we'll see what  
14 the substance of it is. And I'm meaning that from the  
15 standpoint of those opposing -- I mean, you know, if we  
16 need an examiner, do we need a Chapter 11 trustee? I mean  
17 where are we headed with this and where is the debtor in  
18 two days with a disclosure statement and plan?

19 MR. CHEHI: Your Honor, we have -- Mark Chehi of  
20 Skadden-Arps for Credit Suisse's agent to the prepetition  
21 lenders.

22 Indeed, Your Honor, we do have, you know,  
23 significant concerns about how the case has been conducted  
24 by the debtors and how other parties in interest who happen  
25 to be, you know, classic insiders of the debtors -

1 including CrossHarbor and Edra Blixseth and Discovery Land  
2 Company - have -- or have not, actually, cooperated with  
3 various pending discovery requests, both formal and  
4 informal, since beginning in November shortly after the  
5 cases were commenced.

6           Your Honor, the prepetition lenders filed the  
7 motion for appointment of an examiner under  
8 Sections 1104(c)(1) and (c)(2) of the bankruptcy code  
9 because of prepetition and postpetition irregularities in  
10 the management of the debtors' affairs; self-dealing  
11 transactions, agreements, and other conduct by insiders of  
12 the debtors; numerous admitted transactions involving  
13 CrossHarbor and the debtors, CrossHarbor and the debtors  
14 and the debtors' businesses and properties; and financial  
15 involvements, agreements, and understandings between Edra  
16 Blixseth and her affiliates, CrossHarbor, Discovery Land  
17 Company, and others.

18           Such circumstances were identified in our motion  
19 with record references to various transcripts in these  
20 cases, hearings in these cases, references to transcripts  
21 of depositions of sworn testimony, including various  
22 parties. And CrossHarbor itself has admitted the existence  
23 of many of these circumstances in connection with the  
24 response it filed a few days ago to our examiner motion.  
25 They responded to some of the circumstances, made some

1 statements about them, characterizing them, and attached  
2 some documentation apparently reflecting these various  
3 transactions and agreements, prepetition agreements and  
4 transactions with the debtors. But they did not attach  
5 full copies of these documents and agreements, and the  
6 like.

7           The motion requests that an examiner be appointed  
8 to investigate and report on whether such circumstances  
9 give rise to estate causes of action, causes of action for  
10 the debtors' estates; and to report, otherwise, whether or  
11 not these circumstances, activities, involvements,  
12 agreements, and the like, involving the debtors' properties  
13 and businesses and the debtors' on the one hand and the  
14 various insiders on the other have compromised the  
15 integrity of these Chapter 11 cases and the contemplated  
16 plan process.

17           The motion was filed because CrossHarbor; Edra  
18 Blixseth, her affiliates; the debtors; and Discovery Land  
19 Company have not yet provided any meaningful discovery to  
20 the prepetition lenders despite months of discovery  
21 requests and delays. For instance, Edra Blixseth's  
22 affiliate, BLX Group, Inc. - also known in these cases as  
23 "BGI" - is subject to a discovery subpoena that required  
24 production of documents yesterday. And to the best of my  
25 knowledge, at least, such documents have not been produced.

1           Indeed, neither Ms. Blixseth nor Debtors'  
2     counsel, Mr. Patten, have responded to our requests to them  
3     for the name of the attorney representing BGI. And perhaps  
4     if today there was some sort of order agreed to resolving  
5     this injunctive complaint by the committee, one of the  
6     things we were interested in knowing is who actually is  
7     representing BGI and Ms. Blixseth. I still don't know if  
8     there's someone here in the courtroom today doing that or  
9     whether these negotiations occurred between Ms. Blixseth  
10    herself and the others who brought that action, but it's,  
11    again, highly irregular that we do not even have the name  
12    of an attorney representing these counterparties to the  
13    notes that are owing to the debtors' estates which are our  
14    collateral and the like.

15           THE COURT: Mr. Chehi, you'll know that before  
16    this hearing is concluded.

17           MR. CHEHI: As for Ms. Blixseth personally, she  
18    has said she is gathering documents in response to our  
19    original subpoena to her in November but has not produced  
20    them.

21           CrossHarbor's refusal to provide discovery to  
22    date is no secret. The only documents that CrossHarbor has  
23    ever produced are those attached to its response to the  
24    examiner motion. And, again, I want to make it clear those  
25    are not even complete documents. Those are what I would

1 call self-serving excerpts of documents. And they did  
2 provide -- I believe it was sometime in December, Your  
3 Honor, when we brought in another one of these discovery  
4 motions against them -- or objected to the fact that they  
5 were not providing discovery. There had been so many minor  
6 skirmishes on the discovery to date that I can't even  
7 recall the procedural context at this time, but I know that  
8 Your Honor entered an order and directed them expressly to  
9 provide a copy of the agreement to form and the so-called  
10 MOU involving Blixseth, the debtors, CrossHarbor, and  
11 Discovery Land Company with respect to their prepetition,  
12 eve-of-bankruptcy agreements to restructure their  
13 companies. They provided those two documents to us, Your  
14 Honor. Those are the only documents we have received from  
15 CrossHarbor in these cases.

16           Discovery Land Company has also not produced any  
17 documents notwithstanding repeated statements by their  
18 counsel that they would begin on a rolling production two  
19 weeks ago and notwithstanding our agreement to a stipulated  
20 order governing their employment that remains subject to  
21 results of such discovery. And, again, the issues there,  
22 we believe, are the fact that there are these arrangements  
23 between -- agreements. They're not even arrangements;  
24 they're agreements that they've admitted to between  
25 CrossHarbor and Discovery Land Company with respect to a

1 restructuring of these companies. And those parties are  
2 hesitant to deliver to us representing the prepetition  
3 lenders the agreements and the information that's been  
4 exchanged between these parties for whatever reason.  
5 Someone has something to hide, but we're not getting any  
6 documents. I've been at this now for three months. It's  
7 very irregular.

8 And, finally, the debtors themselves seem to  
9 ignore the prepetition lender's information requests with  
10 impunity. For instance, there was just a reference to the  
11 settled incremental DIP financing matter by which the DIP  
12 financing by CrossHarbor was increased by several million  
13 dollars to fund Farcheville. Well, if Your Honor looks at  
14 that order that was entered that we agreed to and  
15 negotiated with them to consensually resolve that matter,  
16 there's a clear term in there that requires them to  
17 promptly provide to the prepetition lenders - meaning to my  
18 firm - copies of all information, documents, and the like  
19 that they have relating to the Farcheville asset and its  
20 value. We have not seen that yet.

21 They asked for -- they reach agreement on a DIP  
22 financing, we reach agreement on the terms, and somehow we  
23 never get documents. And that's not the only incident of  
24 it in this case, Your Honor. I've made repeated requests  
25 to counsel for the debtors during this case to receive

1 copies simultaneously of any information they're sharing  
2 with the CrossHarbor, as the DIP lender; with other parties  
3 in interest. It's non-privileged information. We don't  
4 get any of that, Your Honor.

5 THE COURT: Okay. Mr. Chehi, let's put on some  
6 evidence. I mean at this point, all I have is attorney  
7 argument.

8 MR. CHEHI: Well, Your Honor, I'll ask Mr. Patten  
9 if he wants to -- have you provided the information to us  
10 on Farcheville, for instance?

11 MR. PATTEN: If we haven't provided information  
12 on Farcheville, it's been an oversight. And I don't think  
13 you've asked for it since -- you haven't brought that to my  
14 attention --

15 MR. CHEHI: I asked --

16 MR. PATTEN: -- Mr. Chehi.

17 MR. CHEHI: Okay.

18 MR. PATTEN: And you have asked for -- we have  
19 fully complied with the discovery that you have given to  
20 the debtors.

21 MR. CHEHI: Your Honor, I'm not sure what I can  
22 do. We can put Ms. Blixseth up here. I think we were  
23 intending to call her as a witness. And we can fold in --  
24 in connection with some of the other matters pending here  
25 today, we can ask her under oath who's representing BGI,

1 who's representing her interests in her capacity as a  
2 representative of BGI. Again, she's in the courtroom.  
3 We're looking for the answers; not so much, you know,  
4 putting people under oath. We're happy to do that, but we  
5 just don't have the information. I'm just relating to you  
6 what we don't get.

7 THE COURT: Well, if you're wanting an examiner  
8 appointed, I'm going to have to have some factual basis for  
9 it.

10 MR. CHEHI: Well, Your Honor, let me finish my  
11 presentation on the examiner motion, and then we'll go to  
12 evidence.

13 THE COURT: I mean let's just go right to the  
14 testimony. Let's get to the evidence. I mean I need to  
15 have evidence before I can make rulings.

16 MR. CHEHI: Well, actually, the allegations in  
17 our pleading, Your Honor, about the various connections and  
18 affiliations between the parties, there's references to  
19 transcripts in the case.

20 THE COURT: Are they verified?

21 MR. CHEHI: Excuse me?

22 THE COURT: Are they verified?

23 MR. CHEHI: They're hearing transcripts from  
24 testimony in this courtroom, Your Honor.

25 THE COURT: Well, I want some -- I want on this



1 particular motion -- this is a significant motion. If I'm  
2 going to award your motion and place an examiner in this  
3 case, I want some evidence, I want some testimony, I want  
4 some facts.

5 MR. CHEHI: All right. Your Honor, let me have  
6 Mr. Saunders come up and, and call some witnesses. I would  
7 like to, with Your Honor's permission, just take another  
8 moment to just address the legal issues to put in context  
9 the evidence.

10 THE COURT: Okay.

11 MR. CHEHI: And that is that the appointment of  
12 an examiner here, Your Honor, under 1104(c)(2), is a  
13 mandatory appointment because the amount of claims  
14 unsecured, fixed, liquidated claims in the case against  
15 these debtors exceed \$5 million, and there's a requirement  
16 that an examiner be appointed under the code. It's set  
17 forth in our motion, Your Honor. Those legal standards  
18 have been, have been satisfied.

19 There are proofs of the claim that are of record  
20 with the Court that are specifically referenced in our, in  
21 our motion identified by claim number. They're not  
22 duplicate claims, and they satisfy the threshold monetary  
23 amount. And with that showing, Your Honor, in a case of  
24 this sort, the appointment of the examiner is mandatory.  
25 And, again, you know, we've laid that all out in our

1 motion.

2           Indeed, the debtors concede in their response to  
3 our examiner motion that the appointment of examiner is  
4 required. No one has objected to the appointment of the  
5 examiner. The only responses that were filed were by the  
6 debtor and by CrossHarbor, and the only issues appear to be  
7 the scope of the examiner's investigation which the debtors  
8 and CrossHarbor and other insiders predictably want to or  
9 will want to restrict. And the second issue is how the  
10 examiner will be paid.

11           And as for the scope of the investigation, you  
12 know, we submit it should be as set forth in our motion, no  
13 more; no less. The preamble to our motion, the "whereas"  
14 clause, sets forth that. Unless the Court wants an  
15 examiner to also value and report on the fairness of any  
16 plan that might be filed or sponsored by any of the  
17 insiders in the case - for instance, the contemplated plan  
18 that was referenced in the debtors' bidding procedures  
19 motion, Your Honor - we suggest that if that were to go  
20 forward at some point in the future or if there were any  
21 other proposals for reorganization plans made by any  
22 insiders or sponsored by them, that an examiner could look  
23 at the fairness of those.

24           And I'd refer you to the Bitterman (phonetic)  
25 case which is cited in our papers for a precedent which is

1 very close to that where a Court felt highly concerned  
2 about the insider nature of a proposed sale transaction,  
3 plan process, and the like, and said she was going to  
4 appoint -- the Court was going to appoint an examiner with  
5 expanded powers to do, among other things, report to the  
6 Court on the fairness of the insider-based proposals.

7 THE COURT: Well, if I'm going to do an examiner,  
8 why not just do a Chapter 11 trustee?

9 MR. CHEHI: Well, Your Honor, you once said to us  
10 that we should not come to this Court to request a trustee  
11 without facts.

12 THE COURT: Well, I'm not going to do an examiner  
13 without facts, either.

14 MR. CHEHI: Right. And our problem, Your Honor,  
15 on the trustee issue is that no one has given us any  
16 meaningful discovery of the sorts of facts that go to the  
17 integrity of the Chapter 11 process: The communications,  
18 the negotiations, and the like, between Ms. Blixseth and  
19 the other insiders or the debtors in connection with the  
20 case. And so we have a circularity here, Your Honor.

21 THE COURT: We do. I mean under "C", we're  
22 talking about (quoted as read):

23 "After notice and hearing, the Court shall order  
24 the appointment to conduct such an investigation of the  
25 debtor as is appropriate, including investigation of any

1 allegations of fraud, dishonesty, incompetence, misconduct,  
2 mismanagement, or irregularity in the management of the  
3 affairs of the debtor of or by current or former management  
4 of the debtor if such appointment is in the interests of  
5 creditors, equity security holders, and other interests of  
6 the estate; or the debtor's fixed, liquidated, unsecured  
7 debts, other than the debts for goods, services, or taxes,  
8 or owing to an insider exceed \$5 million."

9 MR. CHEHI: Yes, Your Honor. And (c)(2) is the  
10 latter one there. It's a test in the alternative, and that  
11 test is clearly satisfied here.

12 Frankly, the test under (c)(1) is satisfied, as  
13 well, but (c)(2) is satisfied, given the amount of the  
14 claims in the case and the -- and there's not much more  
15 that needs to be said about it.

16 THE COURT: Okay.

17 MR. CHEHI: And, you know, again, we're going to  
18 put on evidence today, Your Honor, that will, you know,  
19 elicit some of the issues largely in connection with the  
20 debtors' bidding procedures motion, and the like. And we  
21 can, you know, walk through all of that beginning now, if  
22 you would like to, Your Honor, because it's all sort of  
23 tied up together.

24 These are irregular transactions, and they  
25 deserve scrutiny and they deserve investigation. And to

1 date, we have not been able to obtain any of that  
2 investigation in discovery of these matters, and that's why  
3 bring on an examiner motion. There's a lot of value at  
4 stake to our clients, there's a lot of value at stake to  
5 other creditors in the case.

6           These cases are being run by an insider who has  
7 numerous relationships with the DIP lender. The debtor has  
8 now filed a motion seeking bidding procedures for an  
9 undisclosed plan for the benefit of the insider,  
10 CrossHarbor. And there's been no discovery of any of these  
11 issues. And it deserves the light of day before any of  
12 this can go forward because it has a material implication  
13 for creditor recoveries for my clients and its  
14 constituent's recoveries, in particular.

15           And it's no joke. We're not doing this for, as  
16 some have alleged, some sort of scorched-earth tactic in  
17 the cases. This is the sort of -- these are the sorts of  
18 relationships that in any Chapter 11 case deserve a lot of  
19 attention before a Court approves significant  
20 case-determinative outcomes such as a 60-day expedited sale  
21 process which is what the debtors are asking you to do.

22           I can only remind Your Honor back to sometime in  
23 December, I believe it was, when we came here and were  
24 unable to locate the funds required to fund the debtors  
25 beyond the initial several weeks of the case. And in those

1 circumstances, because there seemed to then be no other  
2 funding opportunities, we had to tell the debtors that all  
3 we can see lying in store is a 60-day, you know,  
4 liquidating sale, a prompt resolution, an emergency sort of  
5 fire sale of the debtors' assets because there simply  
6 wasn't any money at that point to do anything more,  
7 notwithstanding the best hopes and, actually, attempts by  
8 the debtors to come up with the funding at that point.

9           And that was decried as, you know, horrible, "A  
10 60-day, you know, expedited sale process doesn't make any  
11 sense." But, Your Honor, that's exactly what the debtors  
12 are asking you to do and to approve with their bidding  
13 procedures, is to consummate a plan with a marketing  
14 process by the end of April, which is approximately 60 days  
15 from now. And we are right back to where we were except  
16 now we have CrossHarbor in the seat of being the planned  
17 sponsor and the acquiror of the assets entirely consistent  
18 with the prepetition agreements between the parties -  
19 Blixseth, CrossHarbor, Discovery Land Company - and the  
20 debtors are attempting to put a short fuse on that process.

21           So these are all the types of issues that we  
22 think need visibility through an examiner and also through  
23 the discovery of -- taken by us and by the committee and  
24 others. To get an examiner involved in this case will take  
25 some weeks. It will take some time for an examiner to get

1 up to speed with the issues. And this case is moving. And  
2 we believe that our discovery should go forward in the  
3 meantime - document discovery only - so that we and the  
4 committee, if they choose to participate in the discovery,  
5 and I don't know why they wouldn't want to, can begin to  
6 understand the documents that reflect the underlying  
7 realities of the various transactions, agreements,  
8 arrangements between the parties so that when an examiner  
9 is actually appointed, they can be pointed in the right  
10 direction of what are the issues, what is it that they need  
11 to look at carefully and make an independent report to the  
12 Court on. That's what we're looking for. And this comes  
13 full circle --

14 THE COURT: Well, let's get the testimony on.

15 MR. CHEHI: Okay, Your Honor.

16 MR. SAUNDERS: Your Honor, Rob Saunders for  
17 Credit Suisse.

18 We'll call Edra Blixseth.

19 THE COURT: Okay. If you could come forward,  
20 please, to be sworn.

21 EDRA BLIXSETH, WITNESS, SWORN

22 DIRECT EXAMINATION

23 BY MR. SAUNDERS:

24 Q. Good afternoon, Ms. Blixseth. How are you?

25 A. I'm good, thanks.

1 Q. Okay. Just to set the stage again, you're the chief  
2 executive officer of the debtors; is that right?

3 A. That's correct.

4 Q. Okay. And you're also the owner the debtors, correct?

5 A. That's correct.

6 Q. Okay. And you're also personally indebted to  
7 CrossHarbor for more than \$35 million, right?

8 A. That's correct.

9 Q. Okay. And that loan is secured by your personal  
10 residence, correct?

11 A. That's correct.

12 Q. Okay. And you're still in default on that loan, right?

13 A. I am.

14 Q. Okay. And you don't have any cash to repay it, right?

15 A. I do not.

16 Q. Okay.

17 MR. SAUNDERS: Your Honor, may I approach?

18 THE COURT: You may approach.

19 Q. (By Mr. Saunders) Could you please turn to Exhibit 12?

20 A. And I remembered my glasses.

21 THE COURT: Do you have your glasses?

22 THE WITNESS: I remembered them this time.

23 THE COURT: Okay.

24 THE WITNESS: I'm there.

25 Q. (By Mr. Saunders) Exhibit 12, this is a sworn



1 affidavit that you submitted in April of 2008 in a Montana  
2 State Court lawsuit involving the Yellowstone Club,  
3 correct?

4 A. I submitted it an behalf of BFI, Blixseth Family  
5 Investments, yes.

6 Q. But it's your personal sworn testimony, right? You  
7 signed the -- this affidavit, correct?

8 A. It is my sworn testimony as manager of BFI.

9 Q. Okay. Could you take a look at page 7? It's the  
10 signature page.

11 A. Hm-hmm.

12 Q. Okay. That's your signature there right above the name  
13 "Edra Blixseth"?

14 A. That is my signature.

15 Q. Okay.

16 MR. SAUNDERS: Your Honor, I'd move Exhibit 12  
17 into evidence.

18 THE COURT: Any objection?

19 MR. PATTEN: No objection.

20 THE COURT: Exhibit 12 is admitted.

21 EXHIBIT NO. 12 ADMITTED INTO EVIDENCE

22 BY MR. SAUNDERS:

23 Q. As of March of 2008 just before you submitted this  
24 affidavit, CrossHarbor was under a contract to buy the  
25 Yellowstone Club from your ex-husband, correct?

1 A. They were under contract to buy the Yellowstone Club  
2 from the owners of Yellowstone Club.

3 Q. Okay. BGI?

4 A. BGI.

5 Q. Okay. Which your ex-husband used to control and which  
6 you now control?

7 A. He used to control. At the time they were doing it, it  
8 was community property.

9 Q. Fair enough. And you now control BGI?

10 A. Correct.

11 Q. Okay. Your affidavit attaches some e-mails between  
12 Mr. Blixseth and Mr. Sam Byrne of CrossHarbor that  
13 discussed the possible use of a prepackaged bankruptcy to  
14 effectuate that sale, right?

15 A. Yes, it does.

16 Q. Okay. And those were e-mails that were provided to you  
17 contemporaneously, right?

18 A. I'm trying to, I'm trying to recall how they were  
19 provided to me, but they were provided to me.

20 Q. In March of 2008?

21 A. I don't remember if it was in March or prior to that.

22 Q. Okay. Let's, let's take a look at --

23 A. If it says in my affidavit that --

24 Q. Certainly, you knew about them by April of 2008 because  
25 that's --

1 A. Of course.

2 Q. -- when you put in your affidavit.

3 A. That's when I, that's when I provided them to the  
4 Court.

5 Q. Thank you very much, okay. You got those affidavits  
6 from your ex-husband, right?

7 A. Either from him or someone related to him.

8 Q. Those "e-mails", if I misspoke.

9 A. I knew what you meant.

10 Q. Do you know whether you got all of the communications  
11 between Mr. Byrne and your ex-husband?

12 A. I would assume I did not.

13 Q. That you didn't?

14 A. It's an assumption.

15 Q. Right. You would assume that there are other e-mails  
16 out there involving communications between Mr. Byrne and  
17 your ex-husband on behalf of BGI that you don't have,  
18 right?

19 A. I would assume that during a course of a year and a  
20 half due diligence to purchase this property, that there  
21 was e-mails other than these.

22 Q. Okay.

23 A. But I have no way of knowing that.

24 Q. And the purchase price for the contract that was in, in  
25 force back then was around \$470 million, right?

1 A. The original purchase price was more than that, but  
2 CrossHarbor had closed on some of the lots, and as an early  
3 closing. And so at the time that the sale fell through,  
4 that was approximately the price.

5 Q. Okay. And the, the stalking-horse proposal that is  
6 maybe another topic of discussion today, that's -- that  
7 would involve CrossHarbor buying the debtors for 100  
8 million, right?

9 A. That's not exactly correct.

10 Q. Okay. How is it not correct?

11 A. Well, we haven't actually -- we haven't submitted the  
12 entire proposal yet of what the plan's going to be and so  
13 we're still working on it, but some, some of that that we  
14 supplied last week to the Court is accurate to, to what  
15 we're looking at with CrossHarbor and a plan.

16 Q. Okay. But some of what you supplied to the Court last  
17 week is no longer accurate?

18 A. No, I'm not saying it's no longer accurate; I'm saying  
19 it's not a complete package, it's not a complete detail of  
20 what the plan will be. We'll do that when we submit the  
21 plan.

22 Q. Okay. Has the purchase price in the proposed  
23 stalking-horse agreement with CrossHarbor changed from  
24 100 million?

25 A. It's not a complete -- it's hard -- it's difficult to

1 answer your question --

2 Q. Okay.

3 A. -- because it's an incomplete -- what we filed last  
4 week is not a complete plan. So I think in fairness,  
5 that's easier to answer once the plan is filed.

6 Q. Okay. Now, you came back into control of the debtors  
7 in August of 2008; is that right?

8 A. That's correct.

9 Q. Okay. And when you came into control, you entered into  
10 an agreement, a contract with CrossHarbor that was called  
11 an "agreement to form"; is that right?

12 A. That's correct.

13 Q. Okay. And did you have any communications with  
14 CrossHarbor in which you negotiated the terms of the  
15 agreement to form?

16 A. Of course.

17 Q. Okay. Are any of those communications in writing or in  
18 e-mails?

19 A. Most of them were done within meeting with our -- my  
20 law firm at the time was Liner in Los Angeles. And we  
21 negotiated those over a few days of meeting together there,  
22 so I don't think that there were many e-mails for the --

23 Q. Okay. Were there drafts exchanged, for instance,  
24 between counsel for the two parties?

25 A. We went back and forth on a lot of things, so I'm sure

1 that there are drafts that were "wants" and "not wants" of  
2 each of us as any contract is.

3 Q. Right. And since you mentioned counsel, who is your  
4 counsel now, ma'am, personally?

5 A. Joe Eisenberg.

6 Q. Okay. And does he also represent BGI?

7 A. We're unclear if that can be -- we'd like him to be the  
8 one, but he's trying to verify that he can also represent  
9 BGI.

10 Q. Okay.

11 THE COURT: I would just his last name again.

12 THE WITNESS: Eisenberg.

13 THE COURT: Eisenberg.

14 THE WITNESS: Hm-hmm.

15 THE COURT: Okay. Mr. Saunders, I just wanted to  
16 double-check, too: On your exhibits, you mentioned  
17 Exhibit 12, which is the affidavit.

18 MR. SAUNDERS: Yes, Your Honor.

19 THE COURT: I may have a wrong docket entry here,  
20 but when I look at the list of exhibits for upcoming  
21 2/10/09 hearing, which is Exhibit 341, my Exhibit 12,  
22 unless I'm looking at it wrong, isn't -- oh, there it is.  
23 I follow. It's actually No. 13, but it's for Exhibit 12,  
24 got you. Very good, thank you.

25 Q. (By Mr. Saunders) Have you, have you made any effort

1 to gather up and produce to Credit Suisse all the drafts  
2 and documents that might reflect negotiations of the  
3 agreement to form?

4 A. We've been trying to gather things that have been asked  
5 for. We actually had to phone Joe Eisenberg, and Mark  
6 Chehi had a -- we had a phone conversation a few weeks ago  
7 because the things that were being asked were so broad. We  
8 got that narrowed down to things that seemed agreeable to  
9 both sides on a telephone conversation, but then when we  
10 were re-served with the discovery, it was -- all of those  
11 things were added back in plus some more, so now we're just  
12 a little confused on what we need to provide.

13 The other, the other difficulty I'm having is that  
14 until August of 2008, I had no information, completely  
15 frozen out of BGI and the operations of BGI. When the  
16 records were turned over to me, they were basically turned  
17 over in a lot of boxes. So I just -- just by difficulty of  
18 trying to get all the information that they're requesting  
19 has been, has been difficult for us.

20 Q. Okay. And as a result of those difficulties, you  
21 haven't produced any of those things yet, right?

22 A. We have some of them. We haven't produced all of them.  
23 We're trying to produce them together, and we're having  
24 difficulty getting all of them.

25 Q. Okay. But as a result of that, you haven't produced

1 any of them yet, right?

2 A. That's correct.

3 Q. Okay. Could you take a look at Tab 6, please? Tab 6  
4 is the final version of the agreement to form, right?

5 A. That's correct.

6 MR. SAUNDERS: Your Honor, I would move Tab 6  
7 into evidence.

8 THE COURT: "Tab 6"?

9 MR. SAUNDERS: Exhibit 6.

10 MR. PATTEN: No objection, Your Honor. It's  
11 already been admitted to this Court as Exhibit 15 back on  
12 December 11th.

13 THE COURT: Let me just look at it here,  
14 agreement to form -- well, if it's already been admitted,  
15 it will be admitted again.

16 MR. SAUNDERS: Well, I just want to make sure  
17 that we get everything that we want into the record, Your  
18 Honor.

19 THE COURT: Absolutely. I want you to be sure of  
20 that, as well.

21 MR. SAUNDERS: Okay.

22 THE COURT: Exhibit 6 is admitted.

23 EXHIBIT NO. 6 ADMITTED INTO EVIDENCE

24 BY MR. SAUNDERS:

25 Q. Ms. Blixseth, could you take a look at page 7,



1 Subparagraph D on page 7?

2 A. Page 7, Subparagraph B?

3 Q. "D" as in "dog".

4 A. Oh, "D", okay.

5 Q. Yeah.

6 A. Yes.

7 Q. Do you see that that paragraph begins:

8 "Other than negotiations and agreements with CH  
9 Acquisition and its affiliates, the EB parties agree that  
10 they shall not, and shall not permit the YC Parties to,  
11 (directly or indirectly) solicit, respond to or otherwise  
12 engage in negotiations or discussions with any parties  
13 (other than CH Acquisition and its affiliates) regarding a  
14 sale, encumbrance or other transfer (directly, indirectly,  
15 by operation of law or otherwise) of any of the Yellowstone  
16 Mountain Club (other than lot sales of platted lots as of  
17 the date hereof in the ordinary course of the business of  
18 the YC Parties but specifically including sales,  
19 encumbrances or other transfers of direct and indirect  
20 interests in the YC Parties or BGI), or a merger (or  
21 similar transaction) of any of BGI or the YC Parties."

22 Did I read that right?

23 A. You did.

24 Q. Okay. And is there any, is there any writing that you  
25 can point me to in which that obligation that I just read

1 or the agreement to form is terminated or modified in any  
2 way?

3 A. Well, the agreement to form is not just one page in one  
4 category; it's the entire agreement. So when the agreement  
5 wasn't able to come together in the way that we had hoped  
6 it would be able to come together, then none of the  
7 agreement to form would, then, still have validity.

8 Q. Right. So my question is just a narrow one: Is there  
9 a writing somewhere? Is there an agreement in which you,  
10 on behalf of the EB parties and CrossHarbor, agree that the  
11 agreement to form is modified or terminated in any way?

12 A. The agreement to form, by essence of it not being gone  
13 forward in the manner that it was supposed to go forward in  
14 and of itself, was null and void at that time.

15 Q. Okay. And so the question to my question is: No,  
16 there's no writing?

17 A. I don't think there is a writing.

18 Q. Okay.

19 A. I could be wrong, but I assume there's not.

20 Q. Okay. And could you take a look at page 15, the very  
21 last line of page 15?

22 A. Yes, I see that.

23 Q. Do you see it says: "This Agreement may not be changed  
24 orally but only by an agreement in writing, duly executed  
25 by or on behalf of the party or parties against whom

1 enforcement of any waiver, change, modification, concent or  
2 discharge is sought"?

3 Do you see that?

4 A. I do.

5 Q. Okay. Did you have any communications with CrossHarbor  
6 after the agreement to form was signed up in which you were  
7 discussing the accomplishment of the transactions that were  
8 provided for by the agreement to form?

9 A. Yes.

10 Q. Okay. And those have -- those documents or those  
11 communications haven't been produced to us, right?

12 A. I think that they were verbal communications with  
13 meetings that we had on -- each of us had responsibilities  
14 within the agreement to form to try to accomplish those, to  
15 put together what we were trying to accomplish with  
16 Yellowstone Club so that we wouldn't be in a court like  
17 this today. And as those went along and certain times  
18 that -- certain things that we had and certain dates that  
19 we had to accomplish things didn't come to fruition, we  
20 would have discussions. But I don't -- I'm not aware of  
21 anything being in writing on those.

22 Q. Okay. Have you looked for any written communications  
23 in that time period?

24 A. I actually didn't.

25 Q. You did not?

1 A. No, I have not.

2 Q. Okay. When you came back into control of the debtors  
3 in August of 2008, CrossHarbor was very helpful to you in  
4 providing you information that they had about the business  
5 of the Yellowstone Club so that you could get up to speed  
6 quickly, right?

7 A. CrossHarbor had been working directly with Tim and not  
8 with me. So we had a time where we got together and  
9 decided what might be in the best interest of the  
10 Yellowstone Club for us to work together based on all of  
11 the work they had been while I had been frozen out of  
12 Yellowstone Club. So I think that I provided some  
13 historical things to them and they provided some more  
14 current things to me so that we could establish the best  
15 program to go forward.

16 Q. Okay. And those things that CrossHarbor gave to you to  
17 help you get up to speed, you haven't produced those to  
18 Credit Suisse, right?

19 A. It was more, again, in discussions and in meetings.  
20 Until we got to the agreement to form and how we actually  
21 executed the final agreements, I actually didn't have a  
22 lot. It was in verbal conversations within meetings.

23 Q. Okay. Have you looked for any documents that  
24 CrossHarbor provided you in that time frame, in August of  
25 2008?

1 A. No, I have not.

2 Q. Okay.

3 A. I thought the final agreements spoke for themselves.

4 Q. Okay. Would you take a look at Exhibit 7, please?

5 Exhibit 7 is what's been referred to as an option  
6 agreement, I think, under which CrossHarbor has the right  
7 to purchase a 160-acre parcel of land within the geographic  
8 confines of the Yellowstone Club; is that right?

9 A. Yes. This, again, was a part of the time that I was  
10 not actively involved, so -- but I have seen this  
11 agreement.

12 MR. SAUNDERS: Okay. Your Honor, I would move  
13 Exhibit 7 into evidence.

14 THE COURT: Any objection?

15 MR. PATTEN: No objection.

16 THE COURT: Exhibit 7 is admitted.

17 EXHIBIT NO.7 ADMITTED INTO EVIDENCE

18 BY MR. SAUNDERS:

19 Q. Okay. And this agreement hasn't been terminated,  
20 right? CrossHarbor still has this option, right?

21 A. That would be a legal conclusion. I'm not sure.

22 Q. Have you had any discussions with anybody at  
23 CrossHarbor about this option?

24 A. We've had discussions about the fact that the, the  
25 ideas and the plans for moving Yellowstone Club forward in

1 a positive and productive manner would work well with  
2 looking at some of these options as going forward. As far  
3 as having anyone legally tell me if this is still in force  
4 or not, I have not done that.

5 Q. So you've had conversations with CrossHarbor about them  
6 maybe buying this 160-acre parcel of land from you?

7 A. We've had conversations with them as that being good  
8 for Yellowstone Club as the overall global plan that we  
9 might put forward.

10 Q. So a transaction in which CrossHarbor bought this  
11 160-acre parcel of land that you currently own, that might  
12 be part of a plan for reorganization; is that right?

13 A. Yes, that might be.

14 Q. Okay. And the discussions or the communications that  
15 you've had with CrossHarbor about the possibility of them  
16 buying this 160-acre parcel of land, have any of those been  
17 by e-mail or in writing?

18 A. Other than to set -- "do you have time to talk now?"  
19 that kind of thing, and go over those kinds of things, I  
20 don't believe so. If there are, we'll find them and try to  
21 have them.

22 To be clear on this, this purchase agreement with --  
23 was made with Tim Blixseth at that time owning 160 acres.  
24 It was not made with me. It was made with CrossHarbor.  
25 When I did the MSA with Tim, part of that was getting all

1 the lands within Yellowstone Club back to me so that it was  
2 under one umbrella. And this was part of the contract that  
3 went with, with that parcel.

4 Q. Okay. But more broadly, you've been discussing with  
5 CrossHarbor as part of -- or you've been discussing with  
6 CrossHarbor during the course of the debtors' bankruptcy  
7 the possibility that you might sell to them, as part of a  
8 reorganization, some land within the geographic boundaries  
9 of the Yellowstone Club that you personally own, right?

10 A. Correct.

11 Q. Okay. And any -- we've never been able to get  
12 deposition testimony about any of that, right?

13 A. I made myself available for depositions. And if you  
14 had asked me that question, I would have answered it, but I  
15 can't remember if you asked me that question.

16 Q. Okay. I deposed you back in December, right, in  
17 California?

18 A. I can't remember when it was, but, yes --

19 Q. Okay.

20 A. -- you deposed me.

21 Q. Has there been some time since then when you've made  
22 yourself available for a deposition?

23 A. I haven't been deposed by you since then, I don't  
24 believe.

25 Q. Okay. Could you turn to Tab 13? Do you have Tab 13,

1 ma'am?

2 A. I do.

3 Q. Okay. And this is the MOU that you entered into  
4 prepetition with Discovery Land Company, right?

5 A. That's correct.

6 Q. Okay.

7 MR. SAUNDERS: Your Honor, I'd move Exhibit 13  
8 into evidence.

9 THE COURT: Any objection?

10 MR. PATTEN: No objection. It's already been  
11 admitted, Your Honor.

12 THE COURT: Exhibit 13 is --

13 THE WITNESS: It's already --

14 Q. (By Mr. Saunders) Mr. Joseph Harris of CrossHarbor  
15 served as an interim chief operating officer of the debtors  
16 for a period of time shortly before the filing of these  
17 cases, right?

18 A. Shortly before the filing of the case, yes. It was  
19 actually just the interim. When I stepped in when the MSA  
20 was, was finalized and we were negotiating, we needed, we  
21 needed somebody on the ground. Joe Harris had been  
22 spending the last year and a half doing due diligence for  
23 CrossHarbor, and we felt that -- it was my suggestion that  
24 he might come in and fill in until we got Discovery, if we  
25 were able to, to come on board.



1 MR. SAUNDERS: Okay. Can I have just a minute,  
2 Your Honor?

3 THE COURT: You may.

4 THE WITNESS: Your Honor, could I just ask: Who  
5 are the other people - did we say that - that I see on the  
6 screen?

7 THE COURT: Mr. Guthals is in Billings, and  
8 Mr. Doak is in Billings.

9 THE WITNESS: Okay. And who do they represent?

10 THE COURT: Mr. Guthals, would you, for the  
11 record, reference who you represent?

12 MR. GUTHALS: Thank you, Your Honor. I represent  
13 Timothy Blixseth.

14 THE COURT: Mr. Doak?

15 MR. DOAK: Yes, Your Honor. I represent James  
16 Murphy, the Murphy Family Trust, and the Edwards Law Firm.

17 THE COURT: Okay. While we're taking a moment,  
18 Mr. Patten, let's just go on around and identify everyone  
19 who's representing parties here today.

20 MR. PATTEN: Andy Patten, representing the  
21 debtors.

22 MR. REAM: Larry Ream, representing the debtors.

23 MR. MOORE: Paul Moore, counsel for CrossHarbor.

24 MR. GREEN: Barry Green, counsel for CrossHarbor.

25 MR. ALTER: Jonathan Alter, counsel for the

1 member group.

2 MR. BECKETT: Tom Beckett, counsel for the  
3 committee.

4 MR. BENDER: Ronald A. Bender, counsel for the ad  
5 hoc group of Class B unit members.

6 MR. WHITMORE: Clark Whitmore, also counsel to  
7 the Class B ad hoc group.

8 MR. HURSH: Benjamin Hursh for CrossHarbor.

9 MR. CHEHI: Mark Chehi, Evan Levy, Rob Saunders,  
10 and Joe Larkin for Credit Suisse's agent to the prepetition  
11 lenders.

12 THE COURT: Thank you. Anyone else appearing?

13 MR. MURPHY: Your Honor, Edward Murphy along with  
14 Mike Warner, representing Highland Capital Management.

15 MR. WARNER: Good afternoon, Your Honor. I'm  
16 Mike Warner, Warner Stevens, on behalf of Highland Capital.

17 MR. MCKAY: Your Honor, Dan McKay for the Office  
18 of the U.S. Trustee.

19 MR. RHOADES: Judge, Quentin Rhoades for Normandy  
20 Hill Capital.

21 MR. GRANT: John Grant for the ad hoc committee.

22 MR. COSSITT: Mr. Cossitt, local counsel for the  
23 committee.

24 THE COURT: Anyone else wishing to make an  
25 appearance on behalf of any client?

1                   Okay. Mr. Saunders, you may proceed.

2                   THE WITNESS: Thank you, Your Honor.

3                   MR. SAUNDERS: Thank you, Your Honor.

4                   Q. (By Mr. Saunders) Ma'am, could you turn back to the  
5                   agreement to form? It's Tab 6.

6                   A. Okay.

7                   Q. Section 14 on page 11. Do you see the first sentence  
8                   of Section 14 says:

9                                "To secure the obligations of the EB Parties  
10                   hereunder, EB is contemporaneously granting a mortgage to  
11                   CH Acquisition encumbering the Settlement Property and  
12                   granting a negative pledge encumbering the Settlement  
13                   Property"?

14                   Do you see that?

15                   A. I do.

16                   Q. And you did, in fact, grant that mortgage, right?

17                   A. Yes, I did.

18                   Q. Okay. And that was filed, right?

19                   A. I'm sorry?

20                   Q. That was filed, publicly filed?

21                   A. Yes.

22                   Q. And it's never been released, right, that mortgage?

23                   A. No, it has not.

24                               MR. SAUNDERS: Okay. Your Honor, I have no  
25                   further questions for Ms. Blixseth.

1 THE COURT: Okay. Mr. Patten -- you know,  
2 Mr. Patten, before we go to you, is there anyone else that  
3 wishes to inquire of Ms. Blixseth that would be supporting  
4 the motion?

5 Okay, Mr. Patten.

6 CROSS-EXAMINATION

7 BY MR. PATTEN:

8 Q. Ms. Blixseth, have you ever testified about this  
9 transaction with CrossHarbor before?

10 A. Yes, I have.

11 Q. Where?

12 A. I believe it was in the first hearing.

13 Q. Do you remember a hearing in Missoula, the final  
14 hearing on the CrossHarbor DIP loan?

15 A. Yes, I do.

16 Q. Were you examined on the very same issues that  
17 Mr. Saunders just questioned you about?

18 A. Pretty much exactly.

19 Q. Have you been deposed in this case?

20 A. I have been.

21 Q. When were you deposed?

22 A. He said it was December, so I'm going to go with his  
23 recollection. I don't remember. But it was late December  
24 or early January.

25 Q. Were you represented at the deposition by counsel?

1 A. Yes, I was.

2 Q. Who was your counsel?

3 A. Joe Eisenberg.

4 Q. Was Mr. Eisenberg your counsel when these cases were  
5 filed?

6 A. Yes, he was.

7 Q. Have you and Mr. Eisenberg had conversation with any  
8 Credit Suisse lawyer, phone conversations or face-to-face  
9 meetings?

10 A. Yes, we have.

11 Q. Who did you meet with?

12 A. We had a phone conversation with Mr. Chehi.

13 Q. Do you remember how many such conversations you've had?

14 A. I'm not sure. That one, I was present for. I'm not  
15 sure how many Mr. Eisenberg has had.

16 Q. Have you attempted to comply with the Credit Suisse  
17 discovery?

18 A. I have.

19 Q. Would you look at Exhibit 6; and, in particular,  
20 Schedule B to Exhibit 6?

21 A. Is that on page 1?

22 Q. It's an --

23 A. There's several B's, so I don't know.

24 Q. It's after -- it's an attachment to the exhibit. It's  
25 at the end of the agreement to form.

1 A. Is it a schedule or an exhibit?

2 MR. PATTEN: May I approach the witness, Your  
3 Honor?

4 THE COURT: You may approach.

5 THE WITNESS: Sorry. Is it this?

6 Q. (By Mr. Saunders) Yes.

7 A. Okay.

8 Q. In your agreement to form, was there going to be a  
9 contribution of what is called a "settlement" to some joint  
10 venture with CrossHarbor?

11 A. Yes, there was.

12 Q. And is that described, in some part, in this  
13 Schedule B?

14 A. Yes, it is.

15 Q. And did you meet -- prior to bankruptcy being filed,  
16 did you meet with Credit Suisse or representatives of  
17 Credit Suisse?

18 A. We had many conversations.

19 Q. And did you disclose in any of those conversations the  
20 terms or the context of the agreement to form?

21 A. I believe we did. I know we talked about the idea of  
22 the phases that we felt were going to be good going forward  
23 if the Farcheville sale happened. And so we discussed what  
24 -- our overall global business term. I don't know if we  
25 actually gave them the documents or not, but we had a

1 discussion with all of them.

2 Q. Okay. And do you remember the agreement to form being  
3 admitted as an exhibit at the hearing on December the 11th  
4 and 12th?

5 A. Yes, I do.

6 Q. And do you remember being examined about the agreement  
7 to form?

8 A. Yes, I do.

9 Q. Do you remember the Discovery Land Company memorandum  
10 of understanding, which is Exhibit 13?

11 A. Hm-hmm.

12 Q. Do you remember that being admitted at the hearing in  
13 December 11th and 12th?

14 A. Yes, I do.

15 Q. And do you remember being examined about this exhibit  
16 on December 11th and 12th?

17 A. Yes, I do.

18 MR. PATTEN: Thank you, that's all I have.

19 THE COURT: Mr. Saunders.

20 MR. SAUNDERS: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SAUNDERS:

23 Q. Ms. Blixseth, could you turn to Tab 14, please? Tab 14  
24 is the transcript of your deposition in Los Angeles on  
25 December 6th. Do you see that?

1 A. I do.

2 Q. Okay. So does that refresh your recollection that  
3 that's when I took your deposition in California?

4 A. Yes, that helps on the date.

5 Q. And that's the only time I've taken -- I've been able  
6 to take your deposition in this case, right?

7 A. That's the only time you've asked to have my  
8 deposition.

9 Q. Okay. Do you recall that we didn't have the agreement  
10 to form or the MOU when I took your deposition in  
11 California?

12 A. I don't recall when, when you had it, so I can't answer  
13 that with dates of when I had this and when, when it was  
14 turned over. I just know we tried to do it when it was  
15 asked for.

16 MR. SAUNDERS: Your Honor, may I approach?

17 THE COURT: You may approach.

18 MR. SAUNDERS: Your Honor, I've handed the  
19 witness a copy of Your Honor's order dated December 10th.  
20 And it's captioned: Order granting motion of prepetition  
21 lenders pursuant to Bankruptcy Rules 7026 and 9014 and  
22 Local Rule 9014-1 authorizing prepetition lenders to  
23 conduct expedited discovery.

24 I apologize, Your Honor. I have an extra copy if  
25 I can hand it up to Your Honor.



1 THE COURT: That's fine, you may approach.

2 Q. (By Mr. Saunders) Do you see, Ms. Blixseth, on page 2,  
3 second paragraph under the bold letters (quoted as read):

4 "It is hereby ordered and adjudged," Paragraph 2 of the  
5 order says (quoted as read):

6 "The agent is hereby authorized to seek on an  
7 emergency basis a formal discovery from, one, CrossHarbor  
8 Capital Partners and any of its affiliates; and, two,  
9 Discovery Land Company and any of its affiliates for the  
10 purpose of ascertaining the nature and scope of the alleged  
11 prepetition insider relationships which may affect whether  
12 or not CrossHarbor Capital Partners or its affiliates is a  
13 proper postpetition lender."

14 Did I get that right so far?

15 A. You did a great job.

16 Q. Okay, thank you. My mother will be proud (quoted as  
17 read):

18 "Said discovery will include production by either  
19 CrossHarbor Capital Partners or Discovery Land Company,  
20 one, the memorandum of understanding between the debtors  
21 and Discovery Land Company referenced at page 4 of the  
22 agent's motion; and, two, the written agreement formulated  
23 by Edra Blixseth, CrossHarbor Capital Partners, and  
24 Discovery Land Company concerning an overall global plan to  
25 restructure and recapitalize the debtors as referenced in

1 Paragraph 15 of the agent's motion."

2 Did I get that, right?

3 A. Yes, you did.

4 Q. Okay. So it wasn't until December 10th, four days  
5 after your deposition, that the Court ordered CrossHarbor  
6 and Discovery Land to provide us with the MOU and the  
7 agreement to form, right?

8 A. If that's what it says, I'm sure that that's accurate.

9 Q. Okay.

10 A. It's hard to keep the dates straight.

11 Q. And in fairness, I take Mr. Patten's point. I have had  
12 an opportunity to ask you questions about the agreement to  
13 form and the MOU, right? I asked you about those in the  
14 December hearing, right?

15 A. Yes.

16 Q. Okay. But I don't have any of the communications that  
17 led to those agreements or that followed those agreements,  
18 right?

19 You haven't produced a single document to me that  
20 would, you know, that would describe or record any draft  
21 agreement to form, draft MOU, any piece of negotiations  
22 that led to those agreements, or anything involved in  
23 trying to implement those agreements, right? I don't have  
24 any of that, right?

25 A. Provided for me -- as I've stated, I think that most of

1 our negotiations and -- for going back and forth were  
2 handled in person. We've met for days and hours going back  
3 and forth with verbal agreements and verbal suggestions.  
4 And so I'm not -- not through any type of not wanting to  
5 give you something. I don't -- we didn't conduct this by  
6 you know, across Sam in Boston and me in California; we met  
7 together and pounded through it.

8 Q. Right. And I didn't know until you told me today that  
9 you've had discussions with CrossHarbor in the course of  
10 the bankruptcy about, about having them purchase land that  
11 you personally own within the geographic confines of the  
12 Yellowstone Club as part of a plan of reorganization,  
13 right?

14 A. That wasn't even -- that's actually not accurate, to  
15 have them purchase the land. It was that I would be  
16 donating the land to Yellowstone Club. So if I  
17 misunderstood your question, then I apologize. It's  
18 actually that I would be contributing that land as they  
19 would be contributing lands that they have already paid for  
20 to the overall plan to make the most productive and  
21 successful course of what we're trying to do with the  
22 Yellowstone Club.

23 Q. Okay. But today is the first time that we've heard  
24 anything - "we", Credit Suisse - have heard anything about  
25 the possibility of you contributing lands to the debtors as

1 part of a plan of reorganization, right?

2 A. Well, I think that if you had read the agreement to  
3 form, that has that as part of it, as well. And so going  
4 along those lines -- and we've indicated that part of our  
5 plan would be going along with what -- the plan that we  
6 thought would be a successful plan prior to the bankruptcy.  
7 You might have assumed that, but I know you can't just  
8 assume. But you were aware that that was in the agreement  
9 to form.

10 Q. Okay. But you are trying to implement now through the  
11 bankruptcy process the restructuring that you had in mind  
12 in the agreement to form?

13 A. We think that it was a very positive way to go about  
14 going forward with the Yellowstone Club, yes.

15 Q. Okay, all right.

16 MR. SAUNDERS: Nothing further, Your Honor.

17 MR. MOORE: Your Honor, may I?

18 THE COURT: Yes, you may proceed.

19 CROSS-EXAMINATION

20 BY MR. MOORE:

21 Q. Ms. Blixseth, you testified that it's your  
22 understanding that the agreement to form is of no force and  
23 effect?

24 A. Yes, I have.

25 Q. And has that been your understanding throughout this

1 bankruptcy?

2 A. As soon as we filed the bankruptcy.

3 Q. So you've never been guided by it during the  
4 bankruptcy?

5 A. Absolutely not.

6 Q. Okay. And to the extent it had nonsolicitation  
7 provisions, that hasn't prevented you from doing whatever  
8 you wanted with respect to soliciting; is that correct?

9 A. That was null and void. And our CRO has been very  
10 active in, in trying to do everything that we should be  
11 doing.

12 Q. Okay. And has Mr. Harris participated on behalf of the  
13 debtor in any respect following the bankruptcy case?

14 A. No, he has not. Quite a bit -- actually, to be clear,  
15 quite a bit before this. He was interim COO only until we  
16 got Discovery to sign on the MOU. They took over that part  
17 September 1st, and Mr. Harris was no longer the interim  
18 COO. So it was a relatively short time.

19 Q. And that's consistent with your testimony Mr. Saunders  
20 took that Sunday in December; is that correct?

21 A. It absolutely is.

22 Q. With respect to plan negotiations and the marketing  
23 process on behalf of the debtors, who have been the  
24 principal representatives of the debtors in developing that  
25 strategy?

1 A. Our CRO.

2 Q. Mr. Greenspan?

3 A. Mr. Greenspan, yes.

4 Q. And your counsel?

5 A. I'm sorry?

6 Q. And your counsel?

7 A. All of us working together, yes.

8 Q. Yeah. And have you taken guidance from them?

9 A. Absolutely.

10 Q. Have you overruled them in any respect?

11 A. Not at all.

12 MR. MOORE: Okay, thank you.

13 THE COURT: Thank you, Mr. Moore.

14 MR. WARNER: Your Honor --

15 THE COURT: You may --

16 MR. WARNER: -- Mike Warner. I just want to make  
17 sure we're still just focusing on the examiner motion and  
18 not on the other matters, because the questions went a  
19 little bit far afield. And I want to preserve my right  
20 with this witness at a later --

21 THE COURT: Certainly, certainly.

22 MR. WARNER: Thank you.

23 THE COURT: Mr. Saunders.

24 REDIRECT EXAMINATION

25 BY MR. SAUNDERS:

1 Q. Ma'am, who recommended Mr. Greenspan to you?

2 A. I believe Joe Eisenberg did.

3 MR. SAUNDERS: Okay. Nothing further, Your  
4 Honor.

5 THE COURT: You may step --

6 MR. MOORE: Your Honor, one more?

7 THE COURT: Mr. Moore.

8 MR. MOORE: Two more, maybe.

9 RECROSS-EXAMINATION

10 BY MR. MOORE:

11 Q. Was your retention of a CRO a requirement placed upon  
12 you by Credit Suisse in its DIP financing?

13 A. It absolutely was.

14 Q. And did it have to be somebody approved by them?

15 A. It absolutely did.

16 Q. And they approved Mr. Greenspan?

17 A. Yes, they did.

18 MR. MOORE: Thank you.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness?

22 MR. SAUNDERS: Your Honor, we'll call Sam Byrne.

23 THE COURT: Okay. Come forward to the clerk's  
24 bench to be sworn, please.

25 SAMUEL BYRNE, WITNESS, SWORN

1 DIRECT EXAMINATION

2 BY MR. SAUNDERS:

3 Q. Good afternoon, Mr. Byrne. How are you?

4 A. Good, thank you.

5 MR. SAUNDERS: In case it's not there anymore,  
6 Your Honor, may I approach and hand up the order we spoke  
7 about earlier?

8 THE COURT: You may.

9 Q. (By Mr. Saunders) I won't impress everybody with my  
10 ability to read again, but, Mr. Byrne, could you take a  
11 look at Paragraph 2 of this order that appears on page 2  
12 and confirm for me that CrossHarbor has never produced any  
13 document to Credit Suisse in this case other than the  
14 memorandum of understanding and the agreement to form?

15 THE COURT: And, Mr. Saunders, for clarification,  
16 this is the order of December 10, 2008?

17 MR. SAUNDERS: That's right, Your Honor. Thank  
18 you.

19 THE WITNESS: Pursuant to this agreement?

20 Q. (By Mr. Saunders) Well, I'll just ask you broadly:  
21 Are there any documents that CrossHarbor has ever produced  
22 to Credit Suisse in this case other than the MOU and the  
23 agreement to form?

24 A. I'm sure in -- prior to the filing of the cases, many,  
25 many documents --



1 Q. Okay.

2 A. -- including the MOU and agreement to form, which were  
3 provided back in September, I believe.

4 Q. Okay. And in the course of the bankruptcy cases in  
5 response to discovery requests that Credit Suisse has  
6 propounded in the bankruptcy cases, has CrossHarbor  
7 produced anything other than the MOU and the agreement to  
8 form?

9 A. I don't believe so, no.

10 Q. Okay. CrossHarbor filed last week some exhibits in  
11 support of their objection to and their motion to  
12 reconsider the Court's order permitting 2004 discovery.  
13 Are you familiar with that, generally?

14 A. I am, yes.

15 Q. Okay. Included in, in that package of exhibits were  
16 some excerpts from various agreements. Do you recall that?

17 A. If I could have them, it would be helpful.

18 Q. Sure.

19 THE COURT: Are they available?

20 MR. SAUNDERS: Let me just correct the record,  
21 Your Honor. It's actually in response to CrossHarbor's --  
22 excuse me, the exhibits were filed in connection with  
23 CrossHarbor's response to the motion for an examiner.

24 THE COURT: Okay. And these are the exhibits  
25 that were filed at Docket 343, Exhibits 1 through -- or,

1 actually, it's A through I?

2 MR. SAUNDERS: Your Honor, may I approach?

3 THE COURT: You may approach.

4 THE WITNESS: Thank you.

5 MR. HURSH: Judge?

6 THE COURT: Mr. Hursh.

7 MR. HURSH: I may have misunderstood what you  
8 said. I believe you referenced Docket No. 343.

9 THE COURT: Yes.

10 MR. HURSH: I believe the correct docket number  
11 is Docket 354. It was CrossHarbor's reply or response to  
12 the actual examiner motion. There was a series of exhibits  
13 attached to it.

14 THE COURT: What did you say, Mr. Hursh? Three  
15 fifty-three?

16 MR. HURSH: Three fifty-four, Your Honor.

17 THE COURT: Oh, 354.

18 MR. HURSH: If I understood correctly.

19 THE COURT: Very good, okay. Thank you for the  
20 clarification.

21 MR. SAUNDERS: Can I approach again, Your Honor?

22 THE COURT: You may approach.

23 MR. SAUNDERS: (Inaudible, out of range of  
24 microphone.)

25 THE COURT: These would be Exhibits A through K,

1 it appears.

2 MR. SAUNDERS: Yes, Your Honor. I apologize,  
3 Your Honor.

4 We're referring to the CrossHarbor's response to  
5 emergency motion of the prepetition lenders for appointment  
6 of examiner and the exhibits that were attached to that  
7 document. So not the hearing exhibits for this agreement,  
8 but the exhibits that were attached to the CrossHarbor's  
9 response to emergency motion of prepetition lenders for  
10 appointment of examiner.

11 THE COURT: Are they different than the exhibits  
12 that were filed by CrossHarbor in opposition to the motion?

13 MR. SAUNDERS: Yeah. Well, I think that there is  
14 a binder of hearing exhibits that are, you know, proposed  
15 to be talked about through testimony today, and those are  
16 different than the exhibits that were actually attached to  
17 the response when it was filed with the Court.

18 THE COURT: Mr. Hursh, would you clarify?

19 MR. HURSH: Your Honor, I believe -- I can go  
20 through my docket here, and I believe my witness list was  
21 filed. Subsequent to that, we filed the reply response. I  
22 believe it was the last pleading that we filed in this case  
23 prior to the hearing here today. And so, yes, there are  
24 exhibits attached to the pleading response filed late  
25 Friday at 354 which I don't believe were identified on the

1 witness and exhibit list.

2 THE COURT: But I guess real question was: How  
3 do they vary from the exhibits that you filed here -- okay,  
4 I see what's going on.

5 MR. HURSH: Okay.

6 THE COURT: Okay.

7 MR. HURSH: I can go through them, if you'd like,  
8 Your Honor.

9 THE COURT: No. The exhibits are -- I'm looking  
10 at exhibits to the response that's at 354.

11 MR. SAUNDERS: That is A through K?

12 THE COURT: Yes.

13 MR. SAUNDERS: Okay.

14 THE COURT: I just want to make sure for the  
15 record we know which exhibits we're referring to subsequent  
16 to today.

17 MR. SAUNDERS: All right.

18 Q. (By Mr. Saunders) And, Mr. Byrne, do you recall  
19 submitting those exhibits with the response that  
20 CrossHarbor filed on Friday?

21 A. I didn't submit anything. Are you talking about the  
22 2000 -- we filed a response to your 2004 motion -- no, your  
23 examiner motion --

24 Q. Yes.

25 A. -- which we said we were perfectly fine with an

1 examiner.

2 Q. Right. But you put in some evidence to show that you  
3 hadn't done anything wrong?

4 A. No, we put in some evidence to show that everything --  
5 most of the things that you guys referred to in there were  
6 -- you know, were not factually accurate.

7 Q. Okay. And do you recall submitting as some of the  
8 exhibits to that response excerpts from contracts?

9 A. Sure.

10 Q. Okay. Are there full contracts from which those  
11 excerpts were taken?

12 A. I'm sure there are, yes.

13 Q. Okay. But you haven't produced those, right?

14 A. I'm sure in the case of most of them, if you gave them  
15 to me, I could tell you when we gave them to Credit  
16 Suisse --

17 Q. Okay.

18 A. -- at some point over the course of the last two years.

19 Q. Okay, but before the bankruptcy. You haven't produced  
20 those documents to us in this bankruptcy case, right?

21 A. That's correct.

22 Q. Okay.

23 A. We've been trying.

24 Q. Okay. You've been trying to produce them?

25 A. We have been trying to come up with a reasonable

1 discovery agreement with you guys. And every time we seem  
2 to agree with something, the next day we get something that  
3 expands the scope of it or adds another party to it or asks  
4 us for more stuff.

5 Q. Your position is that you're not going to produce  
6 anything until you have an agreement on the scope of the  
7 request; is that right?

8 A. Yeah. I mean there was an understanding that we would  
9 agree to a scope.

10 Q. Okay. Included in the, in the exhibits is an e-mail  
11 that you sent to Ms. Blixseth earlier in 2008. Do you  
12 recall that? You characterized it as a "plea".

13 A. If I could have it, I would appreciate it.

14 Q. You don't --

15 A. I don't have -- I mean we were rushing to get that out  
16 over the weekend, so if I could see it, it would be  
17 helpful.

18 Q. Okay. Do you recall sending an e-mail to Ms. Blixseth  
19 earlier in 2008?

20 A. I recall reading one that was incorporated in our  
21 response, yes.

22 Q. Okay. And did you ever have any other communications  
23 with Ms. Blixseth in the course of 2008?

24 A. Sure.

25 Q. Right. And did you ever have any other e-mail

1 communications with her in the course of 2008?

2 A. Sure.

3 Q. Yeah. But they haven't been produced, right?

4 A. That's right.

5 Q. Okay.

6 MR. SAUNDERS: Nothing further, Your Honor.

7 THE COURT: Mr. Moore.

8 CROSS-EXAMINATION

9 BY MR. MOORE:

10 Q. Mr. Byrne, did any of your communications with  
11 Ms. Blixseth in early 2008 have anything to do with the  
12 bankruptcy?

13 A. No.

14 Q. Anything to do with the plan?

15 A. We didn't have discussions about the plan until the  
16 10th of January in Palm Springs.

17 Q. Okay. Anything that you could imagine would be  
18 remotely relevant to this bankruptcy?

19 A. No.

20 MR. MOORE: Thank you.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Any further --

24 MR. SAUNDERS: No other witnesses, Your Honor.

25 THE COURT: Okay. Mr. Patten?

1 MR. PATTEN: I'll call Ron Greenspan.

2 THE COURT: Mr. Greenspan, if you would come  
3 forward to be sworn, please.

4 RONALD GREENSPAN, WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MR. PATTEN:

7 Q. Please state your name and address.

8 A. Ronald Greenspan, 633 West Fifth Street; Los Angeles,  
9 California.

10 Q. Mr. Greenspan, you're the chief restructuring officer  
11 for the debtors in this case?

12 A. Yes.

13 Q. And you've been the chief restructuring officer since  
14 early November; is that correct?

15 A. I was approached after the case had been filed, so  
16 after the case had been filed just immediately before that  
17 first hearing on the DIP, so whatever that date was. And  
18 then I guess I was approved by the Court several weeks  
19 later.

20 Q. Mr. Greenspan, have you been deposed in this case?

21 A. On that infamous -- well, actually, I think I was  
22 deposed on Saturday in December, and Ms. Blixseth on  
23 Sunday.

24 Q. Okay. And outside of your deposition, have you  
25 provided any information to Credit Suisse or any



1 representative of Credit Suisse?

2 A. Very, very voluminous information.

3 Q. Have you had any meetings with Credit Suisse or  
4 representatives of Credit Suisse?

5 A. Yes.

6 Q. How many meetings?

7 A. All total, probably six or seven full days. There was  
8 a meeting in -- an all-day meeting in New York that  
9 started, I don't know, I think it was 9 or 10 o'clock in  
10 the morning and probably ended 6 or 7 in the evening.

11 There was a subsequent meeting in New York that I  
12 attended telephonically, but counsel for the debtor and  
13 Brad Foster - managing director who worked for me - was  
14 there in person. I couldn't make it in person, so I  
15 attended telephonically. And that was probably a five-hour  
16 face-to-face -- four-hour face-to-face meeting.

17 In addition, they have had an entire series of  
18 individual companies that have asked us for information,  
19 that have come to the property. Loughlin Meghji together  
20 with another company called "The Monticello Group" was on  
21 the property for two full days the first time and were  
22 given whatever documents that the debtor had that they  
23 asked for as well as tours of the property and opportunity  
24 to interview all of the debtor management that they wanted  
25 to.

1 Another group that was retained for ski operation  
2 review, which is called "Replay", similarly was given  
3 access to the property; was allowed to ski the mountain;  
4 again, interviews with everybody they wanted, all documents  
5 they wanted.

6 Then, subsequently, after the New York meeting,  
7 Loughlin Meghji wanted some additional information. And so  
8 what we suggested was the way to make it most efficient is  
9 for them to actually attend the meeting in New York, which  
10 was an informational exchange meeting. They attended the  
11 meeting in New York. We then suggested that they go up to  
12 CrossHarbor's office and sit down and meet with  
13 CrossHarbor, ask whatever questions they wanted, get  
14 whatever information -- because I told them that  
15 CrossHarbor has spent more time on this property and more  
16 time analyzing it than anybody else, and that other than  
17 debtors' onsite personnel, CrossHarbor would be a great  
18 source of information. They went and did that.

19 And then we agreed that the following week, they could  
20 once again come out on the property and spend another  
21 couple days on the property; again, get whatever documents  
22 they want and speak to whoever they wanted. And they, in  
23 fact, did that.

24 Then on top of that, we have set up an electronic data  
25 room, and we have populated that data room. We've given

1 the index of that data room to both the unsecured creditors  
2 committee and to Credit Suisse, and we've asked them what  
3 else they would like to see in that data room. They have  
4 told us, and all of the relevant documents they've asked to  
5 be added to that document room we put into the document  
6 room. We have given access to that document room not only  
7 to Credit Suisse but to every single member - and I think  
8 there's 40 members - to every single member of their loan  
9 syndicate so that all the individual owners can get access  
10 to all the documents in the data room.

11 In addition, they've given us additional requests for  
12 documents as recently as two weeks ago, and we told them we  
13 would fulfill all those requests. We told them we had to  
14 prioritize them. I mean these are sweeping additional  
15 requests. Quite frankly, half, at least, have nothing to  
16 do with anything relevant to the sale process or to the  
17 operations but, again, we said we will get to them. But  
18 what we put as the top priorities is everything involved  
19 there that would help them understand the property,  
20 understand the potential transaction, understand the  
21 parameters of the plan.

22 To the best of my knowledge, other than asking us for a  
23 document that was not ours, we've provided them with every  
24 single thing they've ever asked for.

25 Q. And that's been Loughlin Meghji?

1 A. Yeah, it's been Loughlin Meghji and The Monticello  
2 Group and Replay.

3 What is now interesting is -- and then you have -  
4 (inaudible) - event, is that after we did all that with  
5 Loughlin Meghji and Monticello, it now appears - and I  
6 think it's probably because they may not have been giving  
7 Credit Suisse the answer they wanted - they have now  
8 terminated Loughlin Meghji and The Monticello Group after  
9 we spent all this time with them. They've now apparently  
10 stopped them from pursuing this and have now brought in  
11 Replay, a Canadian company. And Replay is now giving us  
12 the exact same information request list that we provided to  
13 both Credit Suisse and Loughlin Meghji, and they've asked  
14 us to start the process all over again. Replay wants to  
15 come back out with two new people, ski the mountain again,  
16 and now get into all the land development process. So once  
17 again, I mean we'll spend days and days. They asked to do  
18 it this week. They just called us up last week and said  
19 they wanted to do it this week. We said we can't, we have  
20 this hearing and other important things like a plan  
21 disclosure statement to get done. But we're going to do  
22 this once again with a brand-new group of people; terribly  
23 distracting, terribly interfering, taking up a tremendous  
24 amount of time of management and of ours.

25 But we've bent over backwards to give them everything

1 they've asked for and to make everybody as available as  
2 possible.

3 Q. You're familiar with Mr. Yankauer with Credit Suisse?

4 A. I am.

5 Q. Has Mr. Yankauer requested information from you  
6 directly?

7 A. Yes.

8 Q. Have you provided the information that Mr. Yankauer  
9 requested?

10 A. Again, to the best of my knowledge, I believe we've  
11 provided everything he's asked for. I mean in some cases  
12 he, for example -- and then to go on, we've provided them  
13 with all the draw requests. We provide them with weekly --  
14 I'm sorry, not weekly; with actual-to-budgeted variances.  
15 And so, for example, they originally asked that we provide  
16 that to them on a weekly basis.

17 And we said, "Look, we only draw money every two weeks.  
18 The checks we cut, that's all -- the draws show everything  
19 we're spending. We then do a reconciliation and give you  
20 the reconciliation. Let us do it every two weeks."

21 We reached an agreement so we give them a  
22 budget-to-actual every two weeks rather than every week.  
23 So we've agreed to everything like that.

24 The only thing -- Mr. Yankauer asked for something, and  
25 we said we had been giving it regular to Mr. Meghji. And

1 upon checking, they found that, yes, in fact, we had, in  
2 fact, been providing all that information on a periodic  
3 basis to Mr. Meghji. And so everything that Mr. Yankauer's  
4 asked for I believe we've given them.

5 I'm not aware of anything, any outstanding requests  
6 other than, as I say, the latest request we got about two  
7 weeks ago which was repetitive to a lot of the stuff we had  
8 given them before. But, again, we said we will give them  
9 everything, prioritizing it with everything that's relevant  
10 to the plan, the property, and so forth.

11 They asked for some things that are best characterized  
12 as "historic forensic information". They want to know  
13 about transactions a year ago - two years ago that really  
14 have nothing to do with getting the property disposed of or  
15 the plan, what are really the burning bridges in this case.

16 And we said, "Notwithstanding the fact that I'm not  
17 sure it's relevant, we will, in fact, provide it to you.  
18 But because this is a limited number of bodies and a  
19 limited number of hours in the day, we're going to put the  
20 important stuff that's necessary for right now at the top  
21 of the list. But we will, in fact, get everything to you."

22 Q. And have you been personally involved in, in receiving  
23 the requests for information and making sure that the  
24 requests for information is, in fact, provided to Credit  
25 Suisse?

1 A. Yes. Most of -- I have, but most of the requests and  
2 my direction -- I'm not necessarily the most accessible  
3 individual and, I mean, I'm doing a bunch of things,  
4 including this. Brad Foster, managing director, spends the  
5 great majority of his time -- I mean he's there for the  
6 last nine consecutive days on the property. So he is on  
7 site virtually 24/7 or in the Bozeman office. And so much  
8 of my requests are that Loughlin Meghji and he and  
9 Mr. Yankauer and he deal directly because he is immediately  
10 accessible, he's very responsive.

11 They have a standing instruction that if there's  
12 anything they ask him to do that they don't get an  
13 immediate response from or a satisfactory response, to get  
14 ahold of me. And it's been very rare that they have had to  
15 do that. And the only time has been, for example,  
16 Mr. Yankauer did call and say, "We're not getting the  
17 monthly operating reports. We're not getting the biweekly  
18 reconciliations."

19 And I sent them the e-mail showing them, in fact, we  
20 had been providing them to Mr. Meghji, who is his eyes and  
21 ears, and we weren't expecting to provide those directly to  
22 Steve. We're more than happy to provide it to Mr. Yankauer  
23 directly. And we started do that, we started copying him  
24 on it. But, in fact, his agent and his financial advisor  
25 had been getting those all the way along.

1 Q. Have you given it your best effort to make sure that  
2 Credit Suisse has whatever information they've requested?

3 A. We have. I mean I don't know anything more we could  
4 have done to get them any more information.

5 Q. And has this all been on an informal basis? In other  
6 words, has Credit Suisse had to propound formal discovery  
7 to you or to the debtor to obtain this information or has  
8 it been voluntarily provided at Credit Suisse's request?

9 A. It's been 100 percent voluntary. And I mean I've heard  
10 today about the Farcheville information for the first time  
11 -- I believe it's the first time. I didn't read the order.  
12 I don't believe anybody's ever asked us for that. And  
13 we'll, of course, provide that information.

14 MR. PATTEN: Thank you. That's all I have.

15 THE COURT: Mr. Saunders?

16 CROSS-EXAMINATION

17 BY MR. SAUNDERS:

18 Q. Mr. Greenspan, I think you said you weren't engaged  
19 until late November of last year; is that right?

20 A. You know, I said I don't remember the dates. I was  
21 engaged after the filing and within a day or two of that --  
22 the initial \$4.5 million DIP, I was engaged just a day or  
23 two before that. As a matter of fact, I don't even know if  
24 I had an engagement letter then, but that's when I was  
25 contacted. I did show up for that initial DIP hearing, and



1 then I was subsequently approved by the Court.

2 Q. Okay. So you have no idea what, what communications or  
3 negotiations took place between Ms. Blixseth or  
4 Mr. Blixseth and CrossHarbor in the years that preceded  
5 your involvement, right?

6 A. I don't. And I can unequivocally tell you they have no  
7 influence upon anything I'm doing or, as far as I can see,  
8 anything the debtor is doing now.

9 Q. Okay. And you've never tried to go out and get  
10 documents that might reflect those communications or  
11 negotiations prepetition, pre your involvement, so that you  
12 could produce them to Credit Suisse, right?

13 A. I've never -- nobody -- no, I have not tried to do  
14 that.

15 Q. Right. So all of that stuff that -- all of the  
16 prepetition communications and negotiations, all right,  
17 that's not within the stuff that you've testified about  
18 trying to be responsive to Credit Suisse and getting them,  
19 right?

20 A. That's correct.

21 Q. Okay. And have you ever --

22 A. Oh, with one exception. To the extent, as I say, about  
23 two weeks ago - and I don't have the list with me - about  
24 two weeks ago, I was given a list that had some property,  
25 some prospectives, some current information requests, and

1 also had a number of things on it that I characterize as  
2 "forensic", as deep historical issues that would go to such  
3 things as avoidance transactions, and so forth.

4 I told Steve that I would, in fact, produce everything  
5 on that list that I could get but that I was going to  
6 prioritize it because I know we have a plan and a  
7 disclosure statement and a property transaction that has to  
8 get done; and that we'd prioritize it and get these stuff  
9 to him, that we could, that dealt with that; and then we  
10 would, in fact, satisfy the balance of that list.

11 Q. Let me just ask you a question about a plan: Have you  
12 ever proposed plan terms to Credit Suisse?

13 A. I have certainly told them what we're contemplating and  
14 asked for input.

15 Q. Okay. When did you do that?

16 A. We did it in a phone -- I talked to them right after  
17 the DIP hearing, and that's when there was discussions  
18 about retaining a broker. And, frankly, it was their  
19 suggestion initially, and it was an idea that I said, "I  
20 don't think that is necessary," I said, "given the time and  
21 given our capabilities."

22 They felt it was important. I talked to the unsecured  
23 creditors committee about it, and then we then proceeded  
24 with that. And then going into January, going into  
25 January, we had a full-day -- not a full-day; a half-day

1 meeting at Skadden-Arps's office in New York at which we  
2 arranged for Credit Suisse to be there, CrossHarbor to be  
3 there, and for the debtor to be there. At which point  
4 there was significant discussions had about what's  
5 important, which is the asset, the value, the development  
6 opportunity, what type of capital is necessary in order to  
7 go forward.

8 And then subsequent to that, there's been ongoing  
9 negotiations between CrossHarbor and Credit Suisse because  
10 the key issue is the new capital coming in. And then I've  
11 had subsequent discussions with Mr. Yankauer.

12 Q. Okay. I'm sorry, have you ever proposed plan terms to  
13 Credit Suisse, plan of reorganization terms?

14 A. A specific term sheet, no.

15 Q. Okay. Have you ever proposed a plan of reorganization  
16 term sheet to the creditors committee?

17 A. A specific term sheet, no; but - (inaudible) - we've  
18 had numerous discussions about what would -- what should be  
19 a plan, how it should be contemplated, what our views were,  
20 and what their views are in an effort to try to narrow  
21 differences and craft something that is going to work.

22 Q. Okay. Mr. Byrne, I think, made mention of a meeting  
23 with Ms. Blixseth in Palm Springs on January 10th. Were  
24 you there for that?

25 A. I was invited but was unable to come.

1 Q. Okay. So whatever communications or negotiations or  
2 discussions they had at that meeting you don't have any  
3 direct knowledge of, right?

4 A. Well, I do in that immediately afterwards, they called  
5 me. And that was a conversation that not just I but also  
6 counsel was involved in. And we discussed what they had  
7 discussed.

8 Q. Okay. And what did they tell you?

9 A. They told me that they had a discussion regarding a  
10 plan with CrossHarbor contributing money that would be paid  
11 to satisfy secured and unsecured creditors. The  
12 contemplation was -- and I really commend the Court to go  
13 out and actually look at the property. I think you'll get  
14 a very different -- a much fuller understanding of what's  
15 the actual physical premises.

16 There was a concept -- in order to get maximum value  
17 and maximum use out of what's known as the Yellowstone  
18 Club, there's a shortage of level land. You basically  
19 have -- it's a property made of three peaks, three  
20 mountains, and much of it is vertical face. I mean there's  
21 skiing on everything that constitutes Yellowstone Club, and  
22 that's where the houses and the condos are basically  
23 perched except for a very small area down at the bottom  
24 that's owned by Yellowstone Club. There is the other 160  
25 acres - which is also referred to as the settlement or the

1 compound - which the Blixseths have owned prior to the  
2 Credit Suisse loan. I mean that's never been encumbered.  
3 It wasn't owned by Yellowstone Club at the time that that  
4 loan was recorded.

5 As you saw under the memorandum to form, in order to  
6 maximize that development, for there to be a financially  
7 viable development there and, frankly, to get the most  
8 value to the unsecured creditors and to Credit Suisse, you  
9 need flat land to build more structures on, to be able to  
10 economically build structures. And so they had discussed  
11 the concept of Ms. Blixseth contributing into a reorganized  
12 debtor some of that land; and, as she testified to, not  
13 being paid for it, but contributing it into a reorganized  
14 debtor a portion of that land in order to give Yellowstone  
15 Club more level ground in order to be able to continue to  
16 build structures.

17 They also told me about proposed treatment for  
18 unsecured creditors that they had discussed. Go  
19 fast-forward to the end of that conversation, and I told  
20 them I did not think that was a confirmable plan. There  
21 were a lot of issues in there that I thought were not  
22 confirmable. And so we basically went back to Square 1 and  
23 started negotiations for a plan that I think has a  
24 possibility of being confirmed.

25 Q. Okay. Did they tell you, coming out of that meeting in

1 Palm Springs, that they had reached agreement on the  
2 \$100 million stalking-horse bid?

3 A. I believe so.

4 Q. Okay.

5 A. Well, actually, no, I take that back.

6 Q. And, again, you weren't at this meeting, right?

7 A. Actually, no, I don't believe it was -- it certainly  
8 was not in any way or shape the format it is today. My  
9 recollection is it was either -- I don't think it's  
10 actually a stalking-horse -- well, yeah, it probably was a  
11 stalking-horse bid, but it was under a very different  
12 structure. The structure today is one that is truly going  
13 to be, I think, a vibrant marketing process.

14 Q. What was the stalking-horse bid that they told you they  
15 had agreed on, then, coming out of Palm Springs?

16 A. I don't remember the exact details, but it was trying  
17 to live within the confines of the DIP agreement.

18 And I've got to correct a comment Mr. Chehi made when  
19 he was talking, and that is the structure in the DIP  
20 agreement was not 60 days put in in the -- what was called  
21 the "mothball budget". The time frame that we're using in  
22 the existing DIP agreement was the time frame mandated by  
23 Credit Suisse when they were going to fund the full  
24 \$20 million. That was not a liquidation, it was not a  
25 60-day mothball, or anything. He's just plain old wrong.

1           We took -- if you remember, we took exactly their term  
2 sheet, the \$20 million term sheet, and essentially changed  
3 Credit Suisse out when they couldn't fund and put  
4 CrossHarbor in. So this was the marketing plan and program  
5 they insisted upon in the original DIP with the debtor.

6           What I said was -- let me finish. You asked me about  
7 their stalking-horse bid. Their stalking-horse concept was  
8 to stay within that time frame that's in there. And I said  
9 I felt there needs to be a longer, more robust time frame.

10          And I said, "If I'm going to back a stalking-horse bid,  
11 what we need to do is you need to give us the concession of  
12 expanding out."

13          Remember, under the existing DIP loan, I have to have a  
14 plan filed, we need a disclosure statement, and we need a  
15 plan confirmation by March 31st. What that meant was, is  
16 we were only going to have maybe three weeks in order to  
17 actually shop that bid because, realistically, if you're  
18 going to actually get somebody into a plan that you're  
19 going to -- and a disclosure statement you're going to file  
20 by February 13, you need to have an offer in there, a  
21 serious offer by the third or fourth week of January, be  
22 negotiating it the first week of February, and then spend a  
23 week trying to memorialize it and get a plan disclosure  
24 statement drafted. So you really basically had a  
25 three-week marketing period there.

1           And I said, "I'm not comfortable with that, I don't  
2 think the Court's going to be comfortable with it, I  
3 certainly know that Credit Suisse isn't going to be  
4 comfortable with it."

5           And so what I said was, "If we're going to go forward  
6 with a stalking-horse" -- which I think is a good idea, and  
7 I'm sure we'll get into that later, "If we're going to go  
8 forward with the stalking horse, you've got to make  
9 concessions on the time period."

10          And, ultimately, they agreed to extend the time period  
11 out, extend the time period out so that we would have a bid  
12 process that would run all the way up to 10 days before  
13 plan confirmation. The longest possible period of time --  
14 it's either 5 or 10 days. I think it's 10 days before plan  
15 confirmation, so it's the absolute longest possible time,  
16 and push plan confirmation out by 30 days. So move the  
17 plan confirmation out to the end of April, which, if you  
18 remember, it was supposed to be March 31st for the 363  
19 sale. If that failed, I got those deadlines extended out  
20 so that if we could get the procedures approved today, we  
21 have essentially a full 2-1/2 month period, far longer than  
22 was ever contemplated under the Credit Suisse DIP or under  
23 the CrossHarbor DIP.

24          Q. Okay. That's all that Ms. Blixseth and Mr. Byrne told  
25 you coming out of their Palm Springs meeting?



1 A. Treatment of unsecureds, member contracts, price, a  
2 concept to get more flat land in -- oh, additional items,  
3 and that is: In order to enhance the -- well, no, two  
4 other things.

5 In order to enhance the note that would be carried  
6 back, that you would have Credit -- the debtor would  
7 receive -- that that note would be encumbered by what I'll  
8 describe as good collateral. Right now, right now the  
9 Credit Suisse loan does not encumber the base lodge. You  
10 know, it's -- the \$110 million - (inaudible) - lodge, the  
11 base lodge, the eating facilities, the ski rental shop, the  
12 retail store, the three-deck parking structure.

13 They basically don't have the heart of the resort and  
14 the project within their collateral. The concept would be,  
15 is that they, in fact -- the note that would be securing  
16 the deferred payments would, in fact, correct all those  
17 imperfections in the Credit Suisse collateral.

18 In addition, as you've heard, Mr. Byrne over the years  
19 or CrossHarbor over the last several years has bought some  
20 golf course lots. Those would be contributed back into the  
21 debtor and that the lien would attach to those lots, as  
22 well, as well as the land that Ms. -- that I guess it's --  
23 yeah, that Ms. Blixseth would contribute back in the 140  
24 acres, or so, of flat land. That, too, would be encumbered  
25 by the lien so that the deferred payments out under a

1 plan -- I'm sorry, the deferred dollars coming in and,  
2 hence, the deferred payments being paid out would actually  
3 be -- would encumber the totality, not just of what's there  
4 today - much better than Credit Suisse has claim on today -  
5 but also it would include this additional land being  
6 contributed back in to really make it a viable -- the  
7 ongoing development be viable as well as it would be a  
8 viable loan.

9 And then, finally -- oh, yeah, and then, also, they  
10 knew and everybody who's looked at this knows that this  
11 project needs 10s of millions of dollars of additional  
12 capital just to operate and then to prosecute the  
13 development. And, again, I commend anybody who's going to  
14 make a decision in this case to go out and actually look at  
15 the property, and you will get an understanding of the  
16 magnitude of the capital improvements necessary and what it  
17 costs just to maintain this piece of property.

18 CrossHarbor at that point had agreed that, as a  
19 proponent of a plan, that they would commit to contribute  
20 substantial additional dollars into reorganized debtor. I  
21 believe as of that time they had not quantified that  
22 amount. That was -- that had -- they did not have a number  
23 and no number had been agreed upon, is my recollection, but  
24 that very additional -- I mean 10s of millions of dollars  
25 of additional capital above and beyond the initial capital

1 contribution would be, would be assured.

2 Q. Okay. And all of that came out of the meeting in Palm  
3 Springs between Ms. Blixseth and Mr. Byrne that you weren't  
4 at, right?

5 A. That's my understanding.

6 Q. Okay. Have Ms. Blixseth and Mr. Byrne had other  
7 communications in the course of the bankruptcies that you  
8 haven't been a party to?

9 A. I would imagine so, but I don't know.

10 Q. Right. And you -- to the extent they've had e-mail  
11 communications or negotiations or draft documents going  
12 back and forth, none of that has, you know, has come to  
13 your attention and been produced to Credit Suisse, right?

14 A. I wouldn't say none of it's come to my attention. If  
15 I've been cc'd on it, I've seen it. And, frankly, nobody's  
16 ever asked me for it, but to the best of my knowledge, it  
17 hasn't been produced.

18 Q. Okay. You spent a lot of time talking in response to  
19 Mr. Patten's questions about information requests that  
20 you've had from Credit Suisse. Do you have an  
21 understanding as to how long CrossHarbor spent doing due  
22 diligence on the Yellowstone Club?

23 A. Well, I know they were involved for probably two years.

24 Q. Okay.

25 A. I don't know how long they did formal due diligence,

1 but they -- a considerable period of time, very  
2 considerable.

3 MR. SAUNDERS: Okay. Nothing further, Your  
4 Honor.

5 THE COURT: Mr. Moore.

6 MR. MOORE: Thank you, Your Honor. Just a few  
7 questions.

8 CROSS-EXAMINATION

9 BY MR. MOORE:

10 Q. Mr. Greenspan, I think in response to CS counsel's  
11 questions about gathering correspondence and documents  
12 prior to your tenure, you basically said, I think, they  
13 were historical issues and avoidance issues, correct?

14 A. That's correct.

15 Q. That's how you viewed the requests?

16 A. What I said was, again, I -- and I could be wrong by a  
17 week, but my recollection is about two weeks ago, we got  
18 yet another request, which is fine. I mean we get these  
19 requests regularly. So we got yet another request which  
20 asked for a lot of material we had previously produced.  
21 But for the -- I think it's for the very first time, it  
22 asked for material that dealt with historic -- I mean, you  
23 know, a list of all transactions between Blixseth -- the  
24 Blixseth entity and the debtor.

25 Q. But not to put words in your mouth, but you essentially

1 said those should be sort of secondary requests because  
2 they're historical, they're avoidance issues, they're past  
3 transactions. So we're not going to look -- try and gather  
4 them immediately.

5 A. Well, no, what I said was is we have -- that's not the  
6 reason why we're not going to gather them immediately. The  
7 reason we're not going to gather them immediately is we  
8 have some immediate -- what I call the burning-bridge  
9 issues. I mean you're always prioritizing. Unless you  
10 have unlimited money and unlimited time, you've got to  
11 prioritize.

12 And so when they want to know -- when they want, for  
13 example, an engineering report, that's going to help  
14 determine what the costs are to build a road or a structure  
15 because that's imperative to determine -- the value of the  
16 property is the sale value less the cost of getting there.  
17 So on this list was additional information about the costs  
18 of getting somewhere or something about the environmental  
19 mitigation costs which get --

20 Q. What about did it also include transactions that  
21 were -- that occurred prior to your tenure?

22 A. Oh, certainly.

23 Q. Okay. And did you ever think that those transactions  
24 might be important to an analysis of insider relationships?

25 A. Ultimately, yes, they'll be -- I mean I assume they're

1 all going to be relevant. And one of the things we've  
2 talked about and we've put in the papers and I've talked to  
3 Mr. Yankauer about is that the avoidance actions, and so  
4 forth, my concept -- and I've talked to Mr. Yankauer about  
5 it, I've talked to the unsecured creditors committee about  
6 it, and it seems to have universal agreement, is when you  
7 take those, put them into a liquidating trust, and let --

8 Q. I'm going to stop --

9 A. Let me, let me --

10 Q. -- you because you're not answering my question.

11 A. Okay.

12 Q. Really what I want to focus on is: You haven't  
13 produced those documents because, in your mind, they relate  
14 to avoidance issues, historical issues that are not burning  
15 in your mind today, correct?

16 A. We have not spent the time to put those together in the  
17 last two weeks because on that list and what we're -- and  
18 other things we're doing in connection with what has to be  
19 done to safeguard this asset, those other items --  
20 gathering the information they've requested and doing these  
21 other items for the plan have to take priority if we are  
22 going to maximize the benefit of Credit Suisse and maximize  
23 the benefit of all the other unsecured creditors. We will  
24 absolutely get to them, but we can't get to them any faster  
25 and still take care of this property.

1 Q. So to the extent that they may deal with issues of  
2 prior-to-the-petition good faith, prior-to-the-petition  
3 insider relationships, prior-to-the-petition fair dealings  
4 between the parties, it's not something Credit Suisse can  
5 get to today because it's not being produced today. Am I  
6 correct?

7 A. I can -- I mean I know of no, I know of no transactions  
8 that haven't been openly discussed with Credit Suisse, any  
9 relationship that hasn't been discussed with them - let me  
10 finish - or any operative -- a document that that was  
11 operative then. I know of no documents they have asked  
12 for, legal documents, other than the ones that have been  
13 introduced. We will go back and look for anything in the  
14 debtors' archives and historic files, and we will endeavor  
15 to do that, but I know of no documents -- you know, and I'm  
16 sure -- as I say, I'm sure there are e-mails, I'm sure  
17 there are old ledgers. We will produce those.

18 Q. Okay. But, again, you know of none, but you can't say  
19 to this Court today you've looked at everything and you've  
20 turned it over so someone else like Credit Suisse can  
21 decide whether they deem it relevant. In your mind, you  
22 know of none, correct?

23 A. No, I haven't used the word "relevant" yet. I mean  
24 I've never said it's not relevant. What I said was, "In  
25 the priority, we will give it to them."

1 I have never told them anything isn't relevant.

2 MR. MOORE: All right. Thank you, Your Honor.

3 THE COURT: Anything else, Mr. Patten?

4 REDIRECT EXAMINATION

5 BY MR. PATTEN:

6 Q. Mr. Greenspan, does the CrossHarbor DIP loan require  
7 the debtor to file a plan that is acceptable to  
8 CrossHarbor?

9 A. Yes, it does. That was the approved terms. I have to  
10 have a disclosure statement and plan on file this Friday  
11 that's acceptable to CrossHarbor.

12 Q. And did the Credit Suisse DIP loan that they couldn't  
13 fund, did the term sheet for that DIP loan contain language  
14 that required that the debtors file a plan acceptable to  
15 Credit Suisse?

16 A. Correct. The DIP we agreed to with them required a  
17 disclosure statement and plan filed by this Friday on the  
18 terms acceptable to them.

19 Q. And so the requirement that the plan be acceptable to  
20 the DIP lender and the deadlines to file the plan and the  
21 deadlines to have the plan confirmed all originally came  
22 from Credit Suisse?

23 A. They were Credit Suisse's demands that we had issues  
24 with before. And they said, "Those the terms you're going  
25 to have to live with."



1 Q. Do you have enough time to immediately respond to the  
2 Credit Suisse information requests and meet the deadlines  
3 that are contained in the DIP loan term sheets?

4 A. As I said, to the best of my knowledge, we've responded  
5 to every request in full up until the one we received  
6 approximately two weeks ago. We've responded to a bunch of  
7 that, but I can't respond to that in full and do everything  
8 else, including getting a disclosure statement and plan on  
9 file by Friday.

10 Q. Complying with the -- at least over the last two weeks,  
11 complying with the information requests would interfere  
12 with your ability to timely file the plan and disclosure  
13 statement?

14 A. Both timely file the plan and disclosure statement as  
15 well as operate the property. In other words, we've cut  
16 back staff, and the only way to go through years of records  
17 is to have those pulled and have people who are  
18 knowledgeable go do that. These people all have day jobs.

19 That is the height of the season. This coming week  
20 when, for example, Replay wanted to be there, besides this  
21 hearing, this and next week because of the presidents  
22 holiday is the busiest two weeks outside of the Christmas  
23 to New Years Day. So, again, they wanted to be on site at  
24 the time when the staff was maximally occupied otherwise.  
25 So we cannot both run the debtor, comply with the DIP, and

1 get a plan and disclosure statement as well as, within two  
2 weeks, satisfy what is an unbelievably voluminous document  
3 request list.

4 Q. And so you have to prioritize your time?

5 A. Yes.

6 Q. And deal with what's the, the biggest fire on a burning  
7 bridge first?

8 A. Deal with putting that fire out and saving the bridge,  
9 yes, sir.

10 MR. PATTEN: Thank you.

11 THE COURT: So, Mr. Greenspan, is an examiner  
12 going to just compound that problem?

13 THE WITNESS: Having yet another party there --  
14 and, again, we would try to comply fully with everything  
15 the examiner asked for. Having another party there, going  
16 through, both producing for them as well as -- it's an  
17 education process. I mean it is days and days and days of  
18 both my staff's time as well as management's time. And  
19 needing somebody to give you access to systems, to  
20 accounting systems, at a time when everybody's complaining  
21 there's not enough time to get an effective sale process  
22 going I think is going to very much compound the situation.  
23 We can run a better, more effective sales process in the  
24 next 60 days --

25 THE COURT: The reason I ask that is, I mean, you

1 know, there may be the mandatory nature of one being  
2 appointed anyway, which is alluded to by Debtors. The  
3 creditors committee has no problem with it; you know,  
4 transparency, it opens up the system to any issues.  
5 Obviously, Credit Suisse would like to see that.

6 The issue I have is: Do we just compound  
7 problems in getting toward a plan, a disclosure statement  
8 and plan and getting the properties marketed?

9 THE WITNESS: Your Honor, I mean I think the  
10 debtor said that the debtor didn't have an objection to an  
11 examiner, either.

12 THE COURT: That's right.

13 THE WITNESS: I mean if you're going to appoint  
14 an examiner, what I would ask for is -- I think you have  
15 discretion as to when that examiner starts. Okay?

16 The next 30 days are incredibly difficult, and  
17 then we're going to be into actual confirmation. So you've  
18 got discretion over when it starts and you clearly have  
19 discretion over scope. And I would ask you, as the person  
20 involved in that, in trying to maximize that asset, to be  
21 judicious as far as start date and scope.

22 THE COURT: Well, the problem with that, however,  
23 is if we delay the commencement, do we, do we not have  
24 adequate examination prior to going to confirmation?  
25 Although, from that standpoint, the claims remain anyway.

1 THE WITNESS: Right. I mean we're -- and my  
2 assumption -- and I'm not going to be involved in it. I  
3 mean the Credit Suisse, if there's a deficiency; and the  
4 creditors committee, assuming they're not paid in full, are  
5 the ones that are going to handle -- I have no desire to  
6 get anywhere near that liquidating trust. That will be  
7 where all the claims are, it's where the investigations are  
8 going. They're doing that now, and they're not going  
9 anywhere. I mean what we're talking about is past acts.

10 So I mean it's -- again, you're ultimately going  
11 to make that decision as to how it's implemented. As I  
12 said, the old deals, from my perspective -- I mean there's  
13 a reason why -- I mean if you go back to that memorandum to  
14 form, there's a clear reason why land from that settlement  
15 was going to be paying part of Yellowstone Club. I mean it  
16 is, it is a huge benefit for the ongoing development, and  
17 it's land Yellowstone Club hasn't had a right to for years.  
18 I mean when the Credit Suisse loan was recorded,  
19 Yellowstone Club didn't own that land.

20 So there's -- while there's some elements in the  
21 old memorandum to form, the looks - (inaudible) - what's  
22 been conceived of now, it's only that way because those  
23 were logical then and they're logical now for a maximal  
24 development. There is nothing about that old memorandum to  
25 form or anything else that is influencing or guiding the

1 discussions now or the formulation of a plan now.

2 And that doesn't say -- I mean an examiner can  
3 come on in and replicate what's been done. Again, I'm back  
4 in the situation of I can't see what an examiner is going  
5 to report one way or another that is going to influence --  
6 particularly when we go out to market. I mean in the  
7 market -- and we'll get to the whole marketing issue, what  
8 we've found when we've been in the market to date, but I  
9 think that the market's going to speak.

10 THE COURT: Okay. Thank you, Mr. Greenspan.

11 THE WITNESS: You're welcome.

12 THE COURT: Did my question prompt any questions?

13 Mr. Beckett.

14 MR. BECKETT: Sorry, Your Honor. Thank you very  
15 much.

16 CROSS-EXAMINATION

17 BY MR. BECKETT:

18 Q. Mr. Greenspan, this is a quick, silly inquiry -- it may  
19 be silly. There has been a fair amount of testimony that  
20 there have been relationships in the past between  
21 Ms. Blixseth and CrossHarbor. And you've heard of that,  
22 and you're aware of that.

23 Are you aware of any other relationships between those  
24 two that haven't been testified to today?

25 A. I don't think -- I mean what -- I don't know if it's

1 been made clear that Ms. Blixseth sued to stop the  
2 transaction between Tim Blixseth and CrossHarbor in March  
3 of '08. I mean kind of the irony of this is that "this  
4 acquisition is a long-term conspiracy". She was trying to  
5 block a transaction there that she thought -- I mean there  
6 was no love lost between, from everything I can see,  
7 CrossHarbor and Edra Blixseth at that time.

8 I'm not aware of any other transaction, any other  
9 document. All I know about is the loan that encumbers the  
10 settlement and the BGI asset and the documents that have  
11 been produced here that were produced back in December and,  
12 I'm told, were given to Credit Suisse.

13 I mean Credit Suisse -- sorry, CrossHarbor and Edra  
14 Blixseth went in and made a proposal to Credit Suisse back  
15 in September together. And I am told - and from everything  
16 I can tell - told that the MOU was disclosed to them and  
17 the memorandum to form, the MOF, was disclosed to them.  
18 And that was the, that was the operative agreement they  
19 wanted to move forward on and were making that proposal to  
20 Credit Suisse at that time.

21 Q. And you're not aware of any --

22 A. I'm not aware of any other documents or agreements.

23 Q. And how about you?

24 A. I'm sorry?

25 Q. And how about you? Do you have any other connections

1 with CrossHarbor?

2 A. I've never met CrossHarbor until this. And I think  
3 with respect to Joe Eisenberg, I think my only experience  
4 with him other than knowing him in the bankruptcy community  
5 in Los Angeles for 20 years, I think I've been opposed to  
6 him before. I think I had one small transaction with him  
7 10 years ago, but, for the most part, we've been  
8 adversaries.

9 MR. BECKETT: Very good, thank you.

10 MR. WARNER: Your Honor, I do have some  
11 follow-up --

12 THE COURT: Mr. Warner.

13 MR. WARNER: -- as a result of the Court's  
14 comments.

15 CROSS-EXAMINATION

16 BY MR. WARNER:

17 Q. In the proposed transaction, which we haven't seen  
18 because we haven't seen the plan, but CrossHarbor, in your  
19 mind, would be seeking a finding of this Court approving a  
20 sale transaction, correct?

21 A. No.

22 Q. It's not a sale transaction?

23 A. No. And I'm sorry if we weren't clear enough in what  
24 we thought. What we tried to do was give enough  
25 information -- because the details -- this is a work in

1 process. If we had details, we would file a plan -- full  
2 details, five days ago. What we're trying to do is get  
3 everything teed up so that when we do have a plan, we do  
4 have a marketing program that we can go live with - let me  
5 just finish - to give them enough time.

6 What it's been conceived of -- and I don't think it's  
7 going to change between now and Friday. What it's been  
8 conceived of is that this is a solicitation for the equity  
9 for a reorganized debtor. The old equity will be wiped out  
10 and that new equity will go to either the stalking horse or  
11 a higher bid or potentially to Credit Suisse.

12 Q. And that will be a sale of the new equity through the  
13 plan, correct?

14 A. Oh, I'm sorry, sale of the new equity, yes.

15 Q. Okay.

16 A. I'm sorry, I thought --

17 Q. That's all I asked.

18 A. I'm sorry, I thought you said asset.

19 Q. It's a sale, correct?

20 A. Correct.

21 Q. And CrossHarbor is going to be looking for a finding of  
22 this Court that they've acted in good faith; isn't that  
23 correct? In order to close the deal --

24 A. Yeah -- well, I --

25 Q. -- wouldn't they want that?



1 A. Well, I don't believe that's been expressly discussed,  
2 but you see that in every plan so I assume they're going to  
3 ask for that.

4 Q. Fair enough. How can you, as the chief restructuring  
5 officer; how can this Court; how can any party assess the  
6 good faith if it can't look to prepetition transactions  
7 because the documents have not been turned over?

8 A. I think twofold, is -- as I told you, whatever  
9 prepetition relationship, discussions, or anything else  
10 that went on between Ms. Blixseth and CrossHarbor is not  
11 guiding, has no import, does not affect anything I've  
12 negotiated with them and anything that I've seen  
13 Ms. Blixseth has negotiated with them. Let me just finish.  
14 That's one reason.

15 Secondly, what we are going to do is -- secondly, you  
16 have -- whatever their deal was that was reduced to  
17 writing, the memorandum to form, and so forth, has, in  
18 fact, been produced and has been testified about forever.

19 And then, thirdly, we have the situation where we are  
20 going to take the debtor, the Yellowstone Club assets, and  
21 we are going to expose it to the market and seek to see if  
22 the market or Credit Suisse or somebody will pay more for  
23 those assets.

24 So when you're talking about a good-faith purchase, we  
25 are going to test the price. And to the extent that there

1 is a higher and better bid, that is going to be taken; to  
2 the extent there's not, I think that's going to be a good  
3 indication of what good-faith price is.

4 Q. So in your mind, if there's no higher and better bid,  
5 the bid that's been made is presumptively good faith  
6 because there's no other bid, correct?

7 A. I would say "yes", it's presumptively. Then you've got  
8 to get to con exclusively. And where I would go there is:  
9 You have analyses of value that will be undoubtedly  
10 presented, there will be appraisals that will undoubtedly  
11 be presented, and there will be a course of looking at what  
12 has been done in the negotiations and for the last 3 months  
13 since I've been there and what's going to happen over the  
14 next 60 days.

15 This is going to be under an incredible microscope.  
16 And I think there will be plenty of evidence to find good  
17 faith and bad faith as to how this is conducted.

18 Q. And in your mind, good faith is only tested from the  
19 petition date forward; nothing prior to the petition date?

20 A. With respect to this transaction, yes, because this  
21 transaction doesn't involve prepetition agreements.

22 Q. So the bankruptcy cleanses whatever occurred? The  
23 filing of the petition cleanses whatever may have occurred  
24 between parties prior to the petition date when you're  
25 looking at this new transaction?

1 A. You know, because what -- the beauty of real estate --  
2 no, it doesn't cleanse anything. There is still going to  
3 be, I am sure, avoidance actions. Unless everybody's paid  
4 in full, there's still going to be avoidance actions. The  
5 beauty of real estate is every transaction was recorded.  
6 There's no secret as to the conveyance of every lot from  
7 Yellowstone Club to CrossHarbor. There's recorded deeds.  
8 There are recorded deeds on every one of -- there's no  
9 question about the security for any loan between  
10 CrossHarbor and Ms. Blixseth. It's all public record.  
11 This is all recorded. So it's not an issue of cleansing.

12 When you asked me about a finding of good faith -- and  
13 I think this Court is going to have six months in this  
14 bankruptcy that's going -- that has been and is going to be  
15 examined under a microscope. They're going to have a plan  
16 that's going to be a vetted, a disclosure statement that's  
17 going to be vetted, a marketing process that's going to be  
18 vetted.

19 I mean Judge Kirscher has made it clear that he is  
20 going to take charge and review. Nothing is going to  
21 happen that's not exposed to the light of day during this  
22 process.

23 Q. But you've told us we're not exposing what occurred  
24 prebankruptcy. That's my concern.

25 A. No. What I told you was, is in the last two weeks --

1 or if it's three weeks, I don't know. Somebody give me the  
2 document, and I can tell you when it was produced.

3 In that period of time, given everything that's going  
4 on and given what's happening, we did, in fact, say, "Those  
5 things that don't affect getting a value and getting Credit  
6 Suisse in the capacity to fully evaluate this property,  
7 those are going to be second fiddle," but they're second  
8 fiddle just to providing them documents. I mean we'll get  
9 it to them.

10 MR. MOORE: Thank you, Your Honor.

11 THE COURT: Thank you.

12 You may come forward.

13 MR. WHITMORE: Clark Whitmore for the ad hoc  
14 Class B holders. I just want to clarify again: This is  
15 just for the examiner?

16 THE COURT: It's broadened, it's broadened.

17 MR. WHITMORE: Because I --

18 THE COURT: Mr. Warner brought that up, as well.  
19 It's broadened. I mean we're almost talking, to some  
20 degree, about the solicitation. And I mean the whole --

21 MR. WHITMORE: I have a few questions on the  
22 solicitations motion that relate to facts, and I don't want  
23 to bring them up out of turn. But I get the feeling, as  
24 sometimes happens in bankruptcy, you go from being too  
25 early to too late.

1 THE COURT: Well, you're never too late. But,  
2 you know, we're going to get to that, and we probably  
3 should break it at this point. You will have an  
4 opportunity to raise your questions.

5 MR. WHITMORE: Okay.

6 THE COURT: Mr. Patten.

7 REDIRECT EXAMINATION

8 BY MR. PATTEN:

9 Q. Mr. Greenspan, have you been in discussion with  
10 CrossHarbor over the terms of the plan when we filed on  
11 Friday?

12 A. Yes.

13 Q. And has the prebankruptcy relationship between  
14 CrossHarbor and Ms. Blixseth been brought forward in the  
15 context of your discussions with CrossHarbor?

16 A. No. I mean when I say haven't been brought forward,  
17 there has never been any claim that they're -- that there's  
18 an enforceable agreement there, that they're acting under  
19 that agreement, or it's ever been said, "You've got to do  
20 X, Y or Z because there's an agreement."

21 Everybody's obviously aware of -- we've discussed the  
22 historic relationship. I mean that's an unavoidable --  
23 it's not even "unavoidable"; that is a fact that's out  
24 there for everybody to see. I mean that relationship is  
25 known. They're our, they're our lender. We talk to them

1 virtually every day. We've gone in for an increase in  
2 their loan. I mean there's -- the relationship isn't  
3 hidden, but it's also a daily business relationship, and  
4 the history is known.

5 Q. In the context of proposing the plan, have you been  
6 influenced by the prebankruptcy relationships between  
7 Ms. Blixseth and CrossHarbor?

8 A. No. And as I testified before, I don't think anything  
9 prebankruptcy with respect to a deal, document, or  
10 otherwise has been brought up in connection with the  
11 negotiation of a plan.

12 Q. So any question of good faith in connection with the  
13 prebankruptcy relationship doesn't have anything to do with  
14 the good faith in proposing the plan on your end?

15 A. That's correct. You just said it far more artfully  
16 than I rambled about.

17 MR. PATTEN: Thank you.

18 THE COURT: Mr. Greenspan, you may step down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Mr. Chehi -- oh, you may step down.

21 THE WITNESS: Okay, thank you.

22 MR. CHEHI: Let me pick up where I left off, Your  
23 Honor. First I'll summarize the testimony and then go to  
24 the legal -- some of the legal points.

25 THE COURT: Let me ask you a couple of questions.

1 MR. CHEHI: Sure.

2 THE COURT: Maybe we can move it along.

3 MR. CHEHI: Yes, Your Honor.

4 THE COURT: Given the responses, given the  
5 testimony, it seems what really is at odds is, one, what  
6 the scope of this may be, the examiner's responsibility; as  
7 well as who pays it; and when it commences.

8 I mean those are three things that it seems like  
9 maybe there's not consensus. There's consensus that there  
10 should be an examiner, let's have transparency, let's have  
11 light on everything. And the question, as Mr. Greenspan  
12 just kind of discussed, was, "Well, if there is an examiner  
13 those claims are going to be -- whatever is discovered is  
14 going to be there. Just give us a little time so we can  
15 get some other things put together."

16 Now, you may strongly disagree with that type of  
17 thing and you may also disagree as to Debtors' request  
18 that, in fact, Credit Suisse pay for the costs of the --  
19 potentially pay for the costs of examiner.

20 I guess the question I have for you is: What is  
21 your position on timing? Immediate, or is it something  
22 that can actually be delayed as far as the commencement of  
23 his or her responsibility for 30 days?

24 MR. CHEHI: Let me give you the practical  
25 solution here that, you know, we have mind, is: We assume

1 that were Your Honor to enter an order today directing the  
2 appointment of an examiner, the U.S. Trustee would have to  
3 then undertake a process to appoint an examiner, an  
4 appropriate examiner for the circumstances of these cases.  
5 And that process in and of itself would take a number of  
6 weeks by the time the U.S. Trustee interviews; determines,  
7 you know, who's right for the mission; and then actually  
8 gets that examiner employed by application of this Court.  
9 And that examiner, then, in turn, would have to engage  
10 counsel to assist the examiner in undertaking its  
11 investigation.

12 So as a practical matter, Your Honor, the timing  
13 issue is not -- no one is suggesting or expecting, at least  
14 on our side, that the examiner would be miraculously  
15 appointed and off investigating next week, the following  
16 week, or even by the middle of next month. I think it's  
17 going to take that examiner some time to get moving.

18 And so from a timing point of view, we actually  
19 think that it's important to get the examiner process  
20 started so that it can actually bear some fruit and shed  
21 some light on relationships which are just not prepetition  
22 relationships and are not just potential prepetition causes  
23 of action, but, as counsel for Highland suggested, our --  
24 the focus has to also be on the relationships, the  
25 associations, the agreements, the understanding, the whole



1 ball of yarn that overlaps the prepetition and the  
2 postpetition period. Because Ms. Blixseth testified,  
3 Mr. Greenspan testified that there have been, you know,  
4 ongoing negotiations between Blixseth and CrossHarbor  
5 outside of the ambit of Greenspan.

6 THE COURT: Mr. Chehi, if there's an examiner  
7 appointed, it's going to be pre and post.

8 MR. CHEHI: Very good. And we think that the  
9 Court deserves and the other parties in interest deserve,  
10 you know, a report from the examiner expressing independent  
11 views - not our allegedly biased views or that other  
12 person's allegedly biased views - of what their view is of  
13 the facts and whether those are tantamount to something  
14 that, No. 1, could give rise to causes of action; No. 2,  
15 could have tainted or is tainting the plan process, the  
16 process that began supposedly at the commencement of the  
17 cases but, as Ms. Blixseth testified - notwithstanding  
18 other statements subsequently made - began at the time the  
19 agreement to form and the MOU were negotiated, because  
20 those documents, in her view, are -- contemplated a  
21 restructuring, which she said today very specifically are  
22 being effectuated as they can be through the Chapter 11  
23 process. She admitted that to Mr. Saunders.

24 THE COURT: Well, so then, you know, I guess  
25 trying to cut through so we can get to some of the other

1 matters, as well - not to cut you off - so if we have an  
2 examiner that investigates pre- and post-transactions,  
3 conduct, etc. --

4 MR. CHEHI: Etc.

5 THE COURT: -- and there's a process by which  
6 that will take some time to get that person in place,  
7 whoever that person may be - I'm not sure if there's been  
8 discussion by any of the parties at all - but so there will  
9 be a process there which probably provides Mr. Greenspan  
10 the breathing room he may need to be able to go forward  
11 with the things that are of immediate attention.

12 MR. CHEHI: Absolutely, Your Honor. And he  
13 testified to an important fact, and that is: There have  
14 been no formal discovery requests propounded upon the  
15 debtors since November. And we have not pressed the  
16 debtors to comply with those discovery requests above and  
17 beyond the compliance that we received, which is, you know,  
18 a relatively small assortment of documents at the time the  
19 depositions were taken in early December. We haven't been  
20 pressing them to provide us with additional information  
21 which would have fallen within the ambit of the documents  
22 Mr. Greenspan talked about.

23 "I'm sure there are" - he said - "e-mails, things  
24 in our files, information that's somewhat historical in  
25 nature."

1           That was never produced to us when we originally  
2 requested it. And we can understand that because  
3 Mr. Patten was, you know, single-handed at that time and  
4 things were moving along quickly and everyone was tied up  
5 with the DIP financing. But, in fact, there, you know,  
6 were outstanding discovery requests to the debtors just  
7 like there were to these other parties.

8           THE COURT: But isn't that part of the reason for  
9 my December 10th order, so that there could be that formal  
10 discovery?

11           MR. CHEHI: Well, it actually just authorized  
12 discovery of CrossHarbor and Discovery Land Company, Your  
13 Honor.

14           THE COURT: That's right, it did.

15           MR. CHEHI: It did not -- and we didn't want to  
16 interfere with the debtors because --

17           THE COURT: Okay.

18           MR. CHEHI: -- as we'll get to when we talk about  
19 the bidding procedures motion and the time frame for  
20 confirming a plan and the necessity of filing a plan that's  
21 acceptable by the --

22           THE COURT: Well, at this point, then, I guess as  
23 I see it, really the only remaining issue is who pays for  
24 it.

25           MR. CHEHI: Yeah. We, we --

1           THE COURT: And, obviously, it's a 330 expense  
2 unless, I guess, there's, well, an alleged surcharge,  
3 potentially.

4           MR. ALTER: Your Honor, if I may interrupt.

5           THE COURT: Mr. Alter.

6           MR. ALTER: Jonathan Alter for the record.

7           I just had a question because I'm not certain I  
8 understand: Would the appointment of the examiner obviate  
9 the need for the pending discovery that Credit Suisse has,  
10 or would that be duplicative and run in tandem with the  
11 examiner's work? Because, frankly, if the examiner is the  
12 only one that he's beholden to answer those questions, it  
13 may be better for the estate than having to deal with this  
14 constant dispute regarding discovery. Thank you.

15           THE COURT: Well, and I thought that that was  
16 about the first or second sentence that was stated on the  
17 record when we first started this hearing several hours  
18 ago, was that the decision on the examiner may resolve some  
19 of the discovery disputes.

20           MR. CHEHI: Here's what our view is on that, Your  
21 Honor, if I can give it to you -- and, again, as a  
22 practical matter, an examiner I don't think will be able to  
23 get up and running with his, you know, lawyers to really  
24 commence an investigation until about a month from now. As  
25 a practical matter, it will take them that long to figure

1 out what's going on, figure out what the issues are, figure  
2 out what they should be looking at.

3 We do not agree that the discovery that the  
4 creditor constituents, including our client, the rights we  
5 have to discovery should somehow be suspended because the  
6 examiner is coming. Actually, we think that the efficient  
7 and cost-effective way to proceed is to allow the document  
8 discovery only, which everyone has delayed for whatever  
9 reasons, to go forward; have those documents produced to my  
10 client; have them produced to the committee; and allow  
11 those documents to become part of the mix of information  
12 that the examiner is going to be looking at.

13 And then when the examiner does get up to speed,  
14 he's going to do what every other examiner does, and that  
15 is have some frank discussions with all the parties in  
16 interest about what the potential issues are, what people's  
17 views are about possible matters for investigation,  
18 possible improprieties, possible conflicts, all of the  
19 things that are the subject matter of our motion. And with  
20 the benefit of documents already having been produced in an  
21 orderly fashion, we're talking about non-privileged  
22 documents; and the ability of the various parties in  
23 interest - the committee, Credit Suisse, if there's others  
24 who want to participate in that, that's up to them - those  
25 parties who understand these cases pretty well can sift

1 through the documents, identify the important issues, the  
2 important documents. And then when the examiner arrives on  
3 the scene and is ready to go, he's going to have a real  
4 head start in that process. He's going to have access to  
5 the same documents. And if he wants more documents, he can  
6 ask for them. So it's not duplicative; it's a start.

7 THE COURT: Well, I guess my concern is: How  
8 isn't it duplicative?

9 MR. CHEHI: Well, Your Honor, the same documents  
10 that are being produced for us are going to be made  
11 available to the examiner.

12 THE COURT: Why don't we wait and let the  
13 examiner request those documents?

14 MR. CHEHI: Because it is not giving my client  
15 and its constituents and other parties in interest who have  
16 standing to examine the good faith of various arrangements,  
17 insider arrangements and agreements that pertain to the  
18 plan of reorganization process to explore those for  
19 purposes of bringing those issues forward at the time of a  
20 confirmation of a plan. That's what this is all about. We  
21 can't -- what the examiner can provide to the Court is an  
22 independent view. That doesn't mean that other parties  
23 shouldn't be heard, that there shouldn't be discovery.

24 THE COURT: Well, the problem I have, then, is:  
25 What are we accomplishing with the examiner but just

1     burdening the system more?

2                 Because I know Credit Suisse and the other  
3     parties that are going to object are going to be all over  
4     the debtor. And so why do we throw another party in there?

5                 MR. CHEHI: I'm not even asking for documents  
6     from the debtor, Your Honor; I'm asking for documents from  
7     Blixseth and the Blixseth affiliates, CrossHarbor, and  
8     Discovery Land Company. These are the insiders who are not  
9     the debtors who have a stake in prepetition agreements and  
10    postpetition plan process.

11                THE COURT: Well, see, here's where I run into  
12    the problem, is I just feel like we're just strangling the  
13    system with trying to just push more and more stuff onto  
14    the debtor in trying to get toward confirmation by having  
15    another third party, independent party, doing things. And  
16    then that examiner looks at the situation and goes, "Well,  
17    I don't know if I really trust these documents. I think  
18    there's more behind all of this," and so then we have just  
19    discovery on top of discovery.

20                Certainly, Credit Suisse is very competent in  
21    going forward with discovery, and maybe that's where we  
22    should leave it -- and the creditors committee, as well;  
23    and the ad hoc committee. I mean we've got numerous groups  
24    here that are all wanting to make sure the debtor is  
25    complying with everything they need to do.

1 MR. CHEHI: Your Honor, we can talk to our client  
2 about it. You know, I don't think we'd be here filing an  
3 examiner motion if we were getting discovery and  
4 information.

5 But, again, we haven't seen anything but two  
6 documents that the Court ordered produced some time on  
7 December 10th. That's the sum and substance of all of the  
8 issues. It's sort of remarkable, isn't it?

9 And then, lo and behold, the issues that we had  
10 concerns about at the onset of the case and about the  
11 commencement of the case, the involvement of CrossHarbor in  
12 the restructuring of the debtors and in their management,  
13 and in the outcome, lo and behold, the testimony here for  
14 the first time today is that's exactly what's being  
15 proposed. And we haven't had an opportunity to look at any  
16 of that.

17 You know, I'll talk to my client, but we'd be  
18 happy -- if Your Honor ordered discovery and we got full  
19 discovery of this non-privileged information that we've  
20 been seeking, we could probably be satisfied for the time  
21 being with going forward with that. And then it's up to  
22 Your Honor if you want to decide to -- you need an  
23 independent view of it. But what you do need is --  
24 somebody needs a view of it, meaning the undisclosed  
25 communications, the stuff behind the selective disclosures



1 and statements that have been made in court and in excerpts  
2 and pleadings and two documents that were given up.

3 THE COURT: Well, you know, maybe what I should  
4 do is just direct that all discovery be done. And if it's  
5 not complied with by order, we look at sanctions under 37  
6 and just bring all this stuff to a halt.

7 I mean I think with the examiner, I'm still  
8 concerned that all we're doing is adding another party in  
9 this; true, independent. And I realize that the debtors  
10 agree to it, the official creditors committee has agreed to  
11 it, Credit Suisse wants it, CrossHarbor has agreed to an  
12 examiner, and yet it seems like we're augmenting the system  
13 for transparency that's going to come out through all the  
14 discovery in any event.

15 MR. CHEHI: If we can take a recess, perhaps,  
16 for, you know, five minutes. And we can talk to our client  
17 and talk to my partners here, and we can talk about whether  
18 or not we'll withdraw the motion for the examiner if we're  
19 going to get full discovery.

20 THE COURT: Well, at this point, I'm wondering if  
21 the motion isn't -- if the appointment isn't mandatory, as  
22 the debtor asserts, anyway.

23 MR. CHEHI: If there's a request and the request  
24 is ours. And we can withdraw the request.

25 THE COURT: Well, before we do that, let me tell

1 you a couple of things that are going on. The Billings  
2 courtroom, there are two trials going on. There's, I  
3 believe, an arraignment coming -- or a detention hearing  
4 coming up at three which takes out the third courtroom  
5 where Mr. Guthals and Mr. Doak are sitting right now.  
6 They've been informed previously of this risk that they may  
7 be -- they may have to leave. And then we'll terminate and  
8 then bring them back after the detention hearing.

9           Given that prior knowledge to them, I really  
10 can't sit here until three-thirty to reactivate this  
11 hearing. I will give you a recess.

12           MR. CHEHI: We're just talking five minutes for  
13 ourselves, Your Honor.

14           THE COURT: Yes. But all I'm saying is I think  
15 just so Mr. Guthals and Mr. Doak know, you may not be on  
16 system for awhile during that detention hearing. And then  
17 we'll just go forward here, and then you can come back on  
18 at the time that detention hearing is over. Because we  
19 need the time here.

20           So before we do anything, I do want Mr. Hursh to  
21 comment because he has a comment to just what we've been  
22 talking about, Mr. Chehi.

23           MR. CHEHI: Sure.

24           MR. HURSH: Judge, I was just going to add two  
25 comments. One, to the extent that the Court is considering

1 what it mentioned just a moment ago - (inaudible) - all the  
2 discovery to go forward, I would like just clarify that  
3 it's never been an issue of us not producing or appearing.  
4 It was truly related to scope, and we think there was a  
5 basis for that.

6           Having said that, I think that what is behind, in  
7 large part, many of the parties' willingness to entertain  
8 an examiner is the thought that that independent party will  
9 exercise judgment and evaluate that which is produced to it  
10 at its request through an independent lens. To date, all  
11 the requests for production that have been served that are  
12 at issue here have been done through the lens of Credit  
13 Suisse.

14           There is, in fact, the possibility that an  
15 examiner, if appointed, could come in and preliminarily  
16 decide that, in fact, there are other issues to look at and  
17 that, in fact, it may take a very different view from this,  
18 independent of the view Credit Suisse has put forth. And  
19 if, in fact, that were the case, then all that document  
20 production that had previously been ordered would have been  
21 for not.

22           So I guess with that, we'll go to recess unless  
23 Mr. Moore has anything he'd like to add, but I think that  
24 that's important to keep in mind, that the parties see this  
25 as a solution to a problem in this case which has been, you

1 know, I think a use of discovery that hasn't been  
2 result-oriented.

3 THE COURT: Okay. Mr. Patten.

4 MR. PATTEN: Your Honor, I think that the counsel  
5 for Credit Suisse has acknowledged that the debtor has  
6 complied with the discovery that's been put to it. I think  
7 Mr. Greenspan described in detail all the information that  
8 he's provided.

9 And I think what this gets down to -- and the  
10 request for an examiner is really to resolve a discovery  
11 dispute between Credit Suisse and CrossHarbor. And I don't  
12 think that we should be burdened by their discovery  
13 dispute, either financially or timewise. And I think that  
14 to the extent that there is going to be an examiner - which  
15 I think is mandatory, Your Honor - it seems to me that it  
16 would be appropriate to stay the Credit Suisse discovery  
17 while an examiner investigates; otherwise, we're bombarded  
18 with information requests and discovery. And there's  
19 another motion set for hearing today on expedited discovery  
20 at a time when we're doing the best we can do comply with  
21 some pretty short deadlines to get the plan in, get the  
22 property marketed, and get the plan confirmed. And instead  
23 of being diverted from multiple different angles, if we're  
24 going to get diverted, let's just be diverted from one side  
25 and not from all sides.

1 THE COURT: Okay, thank you. Mr. Guthals, I'll  
2 let you go next because you may get bumped.

3 MR. GUTHALS: Yes. And this is, this is just a  
4 question in case we get bumped. There is a Rule 2004  
5 examination scheduled for Edra Blixseth in Los Angeles this  
6 coming Monday. And I'm trying to determine if that is  
7 actually going forward or not in light of what we've talked  
8 about today.

9 THE COURT: Mr. Chehi.

10 MR. CHEHI: Your Honor, Mr. Guthals, that is  
11 actually a Rule 2004 examination scheduled for BLX Group,  
12 Inc.; not Edra Blixseth because Your Honor did not  
13 authorize 2004 discovery of her in person. And so whoever  
14 they put forward, which we assume is her, is supposed to  
15 appear for that. But as we've explained to other parties,  
16 we don't intend to go forward with that deposition absent  
17 receiving documents and a meaningful opportunity to review  
18 them because depositions without prior document review are  
19 not very helpful and are wasteful.

20 THE COURT: Okay. Does that answer your  
21 question?

22 MR. GUTHALS: Does that mean "no"?

23 MR. CHEHI: I assume I have done --

24 MR. GUTHALS: I just need to know "yes" or "no"  
25 so I can find out - (inaudible, audio cuts out) - flight to

1 LA.

2 MR. CHEHI: Let's say "no", and we'll reschedule  
3 it at everyone's convenience.

4 THE COURT: Okay.

5 MR. GUTHALS: Thank you.

6 MR. McKAY: Your Honor, just two points: I  
7 wanted to echo Mr. Patten's comment that - this is the U.S.  
8 Trustee's position - that an examiner is mandatory, given  
9 the predicates in the statute.

10 Secondly, just to inform the Court that when the  
11 motion was filed, I did begin discussions with people more  
12 knowledgeable about this in the program as far as how we  
13 would go about identifying a candidate and trying to do the  
14 consultation with the parties that we need to do, and so  
15 forth. And I can't represent to the Court how long that  
16 would take, but we would certainly gear up and do that  
17 after we got the order with regard to scope, and so forth,  
18 so we could mesh those things as far as identifying a  
19 candidate. So I just wanted the Court to be aware that we  
20 really -- I anticipate it would take several weeks to  
21 identify the candidates, contact them, do the interviews,  
22 and so forth.

23 So if that goes into anybody's thinking -- and, I  
24 don't know, if Credit Suisse caucuses and decides they  
25 would withdraw that, I guess it's up to the other parties

1 who may be in favor of it. If they are going to make oral  
2 motions, or whatever, on their own to appoint one, then  
3 we'll address that. But we are ready to move if that's the  
4 Court's order. Thank you.

5 THE COURT: Okay. Mr. Beckett.

6 MR. BECKETT: Thank you, Your Honor. I'm a  
7 little disappointed to hear that last comment because I  
8 should think that if the Court wanted an examiner  
9 appointed, that you get one appointed within a day or two.  
10 And, Your Honor, it struck me that the three highlights of  
11 the testimony were that: Ms. Blixseth has had, has had a  
12 past experience with CrossHarbor and has a current  
13 experience with CrossHarbor. And the current experience is  
14 troublesome.

15 I have asked people to imagine if you can have an  
16 arm's-length transaction with -- negotiation with somebody  
17 who's foreclosing on your house. And I don't know if  
18 that's possible. But what I heard, Your Honor, is  
19 Mr. Greenspan is really much more in control of the  
20 business elements of the plan negotiations right now.

21 And I'm going to suggest that the parties think  
22 about an examiner for a small purpose at first. And the  
23 small purpose is to come in and to come back and to take  
24 the stand and to advise the Court: Is it possible for  
25 Yellowstone with Ms. Blixseth there to negotiate with

1 CrossHarbor and have a plan which is in the best interest  
2 of creditors?

3 And there are a number of considerations, but I'm  
4 not certain it goes into boxes and boxes and boxes of  
5 documents. It needs to be somebody seasoned with some  
6 judgment who can ask some questions and spend some time and  
7 take a look at the - (inaudible) - Credit Suisse discovery  
8 requests and advise the Court on how much of that is  
9 necessary right now.

10 I mean if there are claims and causes of action  
11 that honestly do not go to the ability for there to be  
12 arm's-length negotiations toward a good plan, then that's  
13 stuff that belongs later on in a liquidating trust. I mean  
14 those are claims and causes of action to be pursued later.

15 In the meantime, the most important question is:  
16 Is the Court satisfied that there can be arm's-length  
17 negotiations given these connections resulting in a plan  
18 that's in the best interest of creditors?

19 It doesn't seem to me that that should take very  
20 long. And if the answer is "no", we go from there; if the  
21 answer is "yes", then I hope that gives this Court some  
22 confidence in this process.

23 THE COURT: Okay. Thank you, Mr. Beckett.

24 Let's break. We'll be in recess here until about  
25 three. We will come back at three o'clock. And at that



1 time, just for the Billings people, we understand that they  
2 should be done by three-thirty, so we'll reconnect at  
3 three-thirty. We're in recess.

4 (A brief recess was taken.)

5 THE COURT: We'll continue with the Yellowstone  
6 Club hearings.

7 Mr. Chehi.

8 MR. CHEHI: Your Honor, we are not withdrawing  
9 our motion for an appointment of an examiner. We request  
10 the Court appoint an examiner and, however, hold the  
11 examiner's scope of investigatory duties and obligations to  
12 the Court in abeyance until the examiner is actually  
13 appointed and some determination is made as to how to get  
14 them paid, because that will influence what his scope of  
15 his duties and willingness to perform are going to be. We  
16 think that will take some time.

17 THE COURT: How are you going to find an examiner  
18 before you tell him how he's going to get paid?

19 MR. CHEHI: No. On the payment issue, Your  
20 Honor, that, we think, rests squarely with the debtors.  
21 They should be requesting CrossHarbor to provide additional  
22 funding for this, if they're willing to; they should ask  
23 other potential sources of funding for the same amounts  
24 that would be required to, you know, carry an examiner in  
25 the performance of his duties; and they should come to the

1       prepetition lenders, and they can ask for the same thing.

2               And, of course, if it's not CrossHarbor providing  
3       it, somebody's going to have to provide it on a junior DIP  
4       basis, and come up with a budget and an amount that's  
5       meaningful. And, again, that will go back to what the  
6       examiner's duties are. And if his scope is broad, he'll  
7       need more money to get it done; if his scope is very  
8       narrow, it will probably take him less time.

9               But until the budgetary issues and the actual  
10       issues that will require examination are formulated, we  
11       think initially, the Court should enter the order directing  
12       the U.S. Trustee to appoint an examiner who's willing to  
13       undertake it in those types of circumstances.

14              In the meantime, Your Honor, we're not waiving or  
15       giving up on our rights to take discovery, because the  
16       discovery that we're seeking of CrossHarbor and Discovery  
17       Land Company and BGI is entirely appropriate, it is  
18       meaningful, it is directed to the issues that are at stake  
19       in this expedited plan process in the merits of -- in the  
20       good faith of any CrossHarbor-sponsored plan that benefits  
21       CrossHarbor and Edra Blixseth and whoever else is involved  
22       in transactions and contributing property, and the like,  
23       for whatever consideration under the plan.

24              THE COURT: It sounds like you want to prove the  
25       good faith of CrossHarbor.

1 MR. CHEHI: No, I'm not asking to approve the  
2 good faith of --

3 THE COURT: No, that you're going to prove it  
4 through all of your discovery.

5 MR. CHEHI: Your Honor, to tell you the truth,  
6 this discovery will either disclose warts, disclose  
7 malignancies, or disclose not much. And in either event,  
8 that will be informative for the process, because the  
9 process of resolving the cases consensually at the end will  
10 be driven a bit by the transparency of what is there.  
11 Right now, it's very difficult for our client constituency  
12 to be able to agree to the contemplated plan, as it's been  
13 described in court today and some pleadings.

14 THE COURT: Well, I guess, you know, the issue --  
15 you know, I look back on this thing to November, the last  
16 week in November, the hearings we had right here. But for  
17 you not -- your group not having financing, CrossHarbor  
18 would not have even been involved in this process except as  
19 an owner up at the club because you would have had the DIP  
20 financing. And we all know where that process went. And  
21 so I mean here we are.

22 And, unfortunately, it just seems you're trying  
23 to fight tooth and nail on something that -- you were in  
24 the driver's seat at one point and decided stop at a  
25 stoplight rather than going forward. Now, that's just a

1 comment.

2 I realize you have -- certainly, your clients  
3 have an interest in making sure that there isn't a problem,  
4 and I understand that. It's just, from a credibility  
5 standpoint, it affects me a little bit because I think that  
6 you could have had that position.

7 MR. CHEHI: It's unfortunate, Your Honor. And  
8 we, you know, feel badly on a number of fronts and maybe  
9 apologetic to a certain extent, but also chastened, but  
10 also a bit surprised that inability of our group to provide  
11 funding in the circumstances in which there was a  
12 good-faith attempt made to provide the funding failed  
13 because of developments in the financial markets in that  
14 particular weekend.

15 THE COURT: Yeah.

16 MR. CHEHI: And that did, indeed, allow  
17 CrossHarbor to become the DIP lender in the case, but that  
18 does not mean that CrossHarbor should then have unbridled  
19 freedom to sponsor a plan without an appropriate  
20 examination and investigation and discovery of the  
21 underlying merits and good faith of the plan and the  
22 relationships between the various insiders which are  
23 pervasive in the case and in the plan process.

24 THE COURT: But, Mr. Chehi, we've got, what, how  
25 many people that are going to be looking at the disclosure

1 statement and the plan? Probably six, seven, eight people  
2 that are going to be objecting and that we're going to have  
3 hearings on. So I mean I think that to some point, we're  
4 going to flush out those issues through -- and the  
5 feasibility of the plan through all the subsequent hearings  
6 that are forthcoming.

7 But at this point, based on what you first said  
8 and you're not withdrawing the motion, I am going to issue  
9 an order appointing in limited scope an examiner,  
10 initially. And if that examiner comes back and feels that  
11 there's more that needs to be examined, I'll entertain a  
12 motion to broaden his scope, much like you've mentioned and  
13 much like Mr. Beckett mentioned, to see what the issues  
14 are.

15 And as far as the compensation of that, certainly  
16 it's a 330 expense, and I guess we'll have to kind of sort  
17 that out once the trustee gets to the point of appointing  
18 an examiner and making sure that there's some process by  
19 which that examiner is paid.

20 MR. CHEHI: And the debtors should explore those  
21 financing options with the people who are in the room here  
22 and with anybody else who might be available to provide  
23 funding for an examiner.

24 THE COURT: I think that I will encourage -- I  
25 will ask the U.S. Trustee's Office to work with the

1 examiner on that basis to get consensus as to employment  
2 and the expense of that. And if not, I'll decide it.

3 Mr. Moore.

4 MR. MOORE: Your Honor, if I could help, my  
5 client is prepared to fund that if the Court authorizes an  
6 increase in the DIP loan and the parties think that's  
7 appropriate. And you can sort out relative responsibility  
8 later.

9 THE COURT: Any objection to that?

10 MR. CHEHI: To the extent that we receive  
11 adequate protection of our interests.

12 THE COURT: Well, I'm not sure what that is.

13 MR. CHEHI: Well, Your Honor, just to --

14 THE COURT: No, I mean let's just cap it. I mean  
15 I don't know what an examiner needs, but are we talking  
16 10,000, 20,000, 30,000 to do that initial -- I mean I'm not  
17 talking millions here. I mean, in fact, I haven't seen any  
18 fee apps yet in this thing -- the one fee app that I did  
19 see was withdrawn.

20 MR. CHEHI: This gentleman here has served as an  
21 examiner. He may be able to give you a better view of what  
22 sort of values might --

23 THE COURT: Mr. Warner.

24 MR. WARNER: I really wasn't anticipating saying  
25 this, Your Honor. I've been listening to the process. I

1 am currently the examiner in the Asarco case pending in  
2 Corpus Christi, Texas.

3 THE COURT: Okay, sure.

4 MR. WARNER: What the judge did there - and I  
5 thought it was awful creative - was because the code  
6 mandatorily -- or requires the appointment of an examiner,  
7 the judge really had no choice, and he entered an order and  
8 said, "Examiner is appointed. U.S. Trustee, find someone."

9 The U.S. Trustee said, "What's the scope?"

10 And he said, "Come back, and I'll let you know."

11 The process took six, seven, eight weeks. The  
12 interviewing process goes on at the U.S. Trustee level  
13 locally. Once they've narrowed it down - or at least this  
14 is how it went on in Corpus - once they narrowed it down,  
15 the three or four candidates were sent to D.C. They were  
16 interviewed there. D.C. ultimately made the decision and  
17 sent it back to the local office where they actually  
18 appointed the examiner. Then an order is entered where the  
19 examiner files an affidavit that says: Here's my lack of  
20 interestedness. That process was almost eight - nine  
21 weeks.

22 Then the Court said, "Now we will hold a hearing  
23 on what the scope is."

24 In this case, it's a little different. We would  
25 also need to hold a hearing vis-a-vis, unless we had

1 funding in place, where the funding comes from. In that  
2 case, there was plenty of funding to pay the examiner,  
3 thank God.

4 The scope issue was brought before the Court when  
5 the parties had narrow issues to address. And that's what  
6 the Court really wanted.

7 He said, "Fine, the examiner is now sent out to  
8 do this issue and focus on this issue."

9 The parties were going at that issue themselves,  
10 and it was necessary. The Court did not limit what the  
11 parties would do even if it was to some extent duplicative  
12 of what the examiner was because the examiner was there to  
13 be the eyes and ears of the Court and report to the Court;  
14 the parties would spend it any way they saw. And that was  
15 appropriate to do so.

16 As far as the cost, in this case, you know, if  
17 the Court limits the scope of the examiner to very narrow,  
18 you're probably looking at a \$150,000 item. I don't know  
19 if that's offensive to anybody. I'm just saying that as a  
20 gut reaction. I know what the professionals in this room  
21 charge. I can't tell you that an examiner is going to be a  
22 lot less than that. But it's something we need to at least  
23 focus on, and it's a function of the scope.

24 THE COURT: Thank you.

25 MR. CHEHI: And, Your Honor, in the meantime



1 while the examiner is engaged and arrangements are made to  
2 employ him, you know, our proposal and request to the Court  
3 is that the 2004 discovery that we have - not against the  
4 debtors; we haven't sought discovery against the debtors,  
5 but against CrossHarbor and Discovery Land Company which  
6 this Court previously authorized, I believe it was on  
7 December 10th - that that should be permitted to go  
8 forward.

9           It will not be duplicative of the discovery that  
10 the examiner will be doing because the document production  
11 is going to be done once, and they're going to produce  
12 documents. And to the extent the examiner wants to see  
13 those documents, he's going to have access to them.  
14 Documents are produced on a disk electronically, and the  
15 examiner can have his disk of documents as and when he gets  
16 involved. And to the extent that he wants to parse through  
17 it while the parties, meaning our client, the committee and  
18 if there are other parties in interest that want to  
19 participate in that process - because they all have their  
20 rights, too, to explore the good faith of the plan process,  
21 and the like - have the ability, then, as adversaries in  
22 the case to explore those issues.

23           And, again, Your Honor, when the parties have had  
24 the opportunity to do that, they will then be convinced one  
25 way or the other that either there are issues or there are

1 not meaningful issues or there are huge issues that should  
2 be brought to the Court and which will go to the  
3 confirmability of the plan. Absent having that process,  
4 you're not going to have the opportunity for the parties in  
5 interest who are most affected by the plan to actually  
6 weigh in on the merits of the plan.

7 The plan that's proposed, as Your Honor might  
8 recall from reading the bidding procedures motion, is an  
9 approximate \$100 million purchase price plan. And as we  
10 wrote in our motion, the most important thing about that  
11 motion as a threshold matter is that it's indicating a  
12 value for our collateral that is in the range of  
13 \$100 million as opposed to \$310 million. And that is not a  
14 comforting sign to us from a couple of different points of  
15 view:

16 Number 1: Is that the right value? Has the  
17 property been properly marketed? Is this the right type of  
18 plan to be going forward with as a stalking-horse plan; or  
19 alternatively, are there higher and better plan  
20 alternatives out there?

21 And, No. 2, if those are the values that the  
22 debtors are now advocating and CrossHarbor is now  
23 advocating, those values are very different than the values  
24 that they embraced just two months ago during adequate  
25 protection hearings.

1           And it really puts into question whether our --  
2 whether the prepetition lenders' interests in their  
3 collateral are adequately protected against the priming  
4 liens. They certainly aren't if the ultimate value is  
5 \$100 million. And so we have very serious concerns about  
6 that. The treatment of unsecured creditors is no better.  
7 And so those issues loom very large.

8           And, again, that justifies -- because these are  
9 very large numbers, Your Honor. They may not be out here  
10 too often but these numbers are here now, and they're big  
11 for the people who have advanced money to these companies  
12 and not been repaid. Three hundred million dollars is a  
13 lot of money. And the difference between \$100 million  
14 recovery and a \$200 million recovery and a \$300 million  
15 recovery on a claim of that size is very, very material  
16 today. And that justifies the expenditure of the lender's  
17 resources in taking the discovery and understanding fully  
18 the plan.

19           Which again, Your Honor, maybe the discovery  
20 shows there are no warts, there are some warts, or there's  
21 a big problem. That will drive the outcome of these cases  
22 either to a consensual conclusion or to a litigation.

23           THE COURT: Well, let's move on to the next  
24 matters. As it relates to the examiner, I'll issue an  
25 order on that. And it will have some limited scope, as

1 Mr. Beckett referenced during his comment as well as  
2 Mr. Chehi's. And it may be even that we broaden that -  
3 (inaudible, coughing in microphone) - proper motion once we  
4 know who we might be having as an examiner. So that's,  
5 that's resolved.

6 Now, we still have the discovery, the motion to  
7 reconsider the 2004 exam, which I believe is Mr. Hursh's  
8 motion to reconsider.

9 MR. HURSH: Yes, Your Honor. And I'll start  
10 where I left off just before the break. And I will, in  
11 recognition of the other issues on the calendar, try to  
12 curtail my comments to some extent.

13 We have not - and let's be clear - said at any  
14 time, "We're not going to participate in the examination or  
15 produce documents." That's simply not been our position.  
16 I don't know if --

17 THE COURT: What is your position?

18 MR. HURSH: The position is that the requests  
19 that have been received exceed the permissible scope of a  
20 2004 exam of a third party. And they're simply -- at least  
21 we've not received to date any reason to justify them.  
22 They create a burden on CrossHarbor that is extensive.  
23 Particularly, they require production of all internal  
24 communications, e-mails going back to, I believe it's 2007,  
25 well before either the petition date or even some of the

1 matters prepetition that have been talked about today.

2 We proposed as an alternative, and this is an  
3 exhibit that -- there is in the docket --

4 THE COURT: Well, but I guess let's not get the  
5 cart before the horse. Really, the only motion before me  
6 is the motion to reconsider whether, in fact, the order  
7 previously granting the 2004 should go forward.

8 MR. HURSH: Certainly; yes, Your Honor.

9 THE COURT: And I really hear concurrence on that  
10 point.

11 MR. HURSH: Well --

12 THE COURT: And so if there is a concern over the  
13 scope of that examination or the documentation, or  
14 whatever, it would seem to me that that would come at the  
15 point that you're either producing the documents and that  
16 you feel there's an objection that's appropriate or you  
17 come to me for a protective order.

18 MR. HURSH: Okay.

19 THE COURT: And we just go down through  
20 whatever's been requested, and I rule if you have to  
21 produce it or you don't produce it. Then we know what  
22 we're dealing with. At this point in time, we don't  
23 know what --

24 MR. HURSH: I understand.

25 THE COURT: I realize they've asked for all

1 internal communication. Maybe there are those  
2 communications, maybe they don't even exist. But I mean  
3 what are we dealing with?

4 So, in essence, just based upon what's just  
5 occurred, I don't believe that there's cause to reconsider  
6 my earlier order. But, certainly, I leave with you leave  
7 to file motion as to protective order --

8 MR. HURSH: Okay.

9 THE COURT: -- as to the matters. Or if they  
10 don't exist -- and we'll just go down through it. We may  
11 do that. Certainly, it wouldn't require, necessarily, all  
12 the parties to travel back to Montana. We can probably set  
13 something like that up either by video conference or by  
14 phone, and we'll just go down through the issues.

15 MR. HURSH: With that in mind, Your Honor, I  
16 believe Credit Suisse wanted to set up for next week,  
17 February 16th, an examination. Mr. Chehi previously  
18 indicated, absent production, he wasn't going to go forward  
19 with Ms. Blixseth's. Based on what you're telling me and  
20 what Mr. Chehi said earlier, should I understand, then,  
21 that that is off next week? We'll revisit it?

22 THE COURT: I think he already indicated to  
23 another attorney that that was off for the 16th. Is that  
24 Monday? I'm sure that's what he said.

25 MR. CHEHI: The answer is the same, Your Honor.

1 We are not interested in taking a deposition of anybody  
2 until we've had documents. And that means resolving the  
3 document issues. There are really only three issues here.  
4 One is the specified period covered by discovery.

5 THE COURT: Sure.

6 MR. CHEHI: The original 2004 order said the  
7 discovery -- the information should be produced to the  
8 extent it exists and arises during the period from  
9 January 1, 2007, through the present.

10 In discussions with CrossHarbor's counsel, I was  
11 agreeable to taking an entire year off of that and just  
12 starting at January 1, 2008, which is a period in time  
13 after they had reached their arrangements with Tim Blixseth  
14 but prior to the end of March time when CrossHarbor  
15 admittedly terminated the arrangements. And then there  
16 were various marital disputes that were resolved and the  
17 entire thing transitioned.

18 THE COURT: Well, I think, given what you've said  
19 and what Mr. Hursh said and given the motion for  
20 reconsideration, the motion to reconsider is denied with  
21 leave to pursue whatever other remedies you feel  
22 appropriate regarding either protection or for you to seek  
23 sanction under 37 for not producing.

24 MR. CHEHI: Okay. And, Your Honor, what we're  
25 most interested in is just getting them to start to

1 produce. If they want to do it -- you know, produce and  
2 then fight about other -- you know, the scope of discovery,  
3 that sort of forces them to go back and, you know, maybe go  
4 through their files again because they've got to, you know,  
5 look again a second time to get things that Your Honor may  
6 be directing them to produce.

7 I think in the interest of efficiency for all the  
8 parties, and judicial efficiency, we should, in the next  
9 couple of days or whenever it's at the earliest convenience  
10 of the Court, address the particular issues. Because they  
11 are not difficult. We're just looking for non-privileged,  
12 internal communications at CrossHarbor, no doubt, and  
13 during that time frame that are responsive to the requests  
14 in our documents which really just go to their involvements  
15 with the debtors on a prepetition and postpetition basis.  
16 That's what we're looking for.

17 THE COURT: Okay. I leave that between you,  
18 Mr. Hursh, and Mr. Moore to work out, and other counsel.

19 MR. CHEHI: Very good, Your Honor.

20 THE COURT: I don't mean to exclude you.

21 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

22 THE COURT: And Mr. Byrne, as well. Obviously,  
23 I'm sure he'll be involved with that process.

24 So that takes care of -- Mr. Chehi, that deals,  
25 then, with your emergency motion of prepetition lenders for



1 order authorizing prepetition lenders to seek expedited  
2 discovery, doesn't it? Isn't that all tied together?

3 MR. CHEHI: Actually, Your Honor, that motion was  
4 directed at our motion to compel immediate commencement of  
5 a marketing process. And that - (inaudible) - upon the  
6 debtors' more recent motion to -- for bid -- approval of  
7 bidding procedures.

8 We had hoped that we would have had some  
9 discovery prior to coming here today, Your Honor, but, you  
10 know, as has happened in the past, to the extent we're  
11 examining witnesses, we're going to be doing it without the  
12 benefit of a deposition or any documents.

13 THE COURT: You know, sometimes that's the best  
14 way to do it.

15 MR. CHEHI: And we're prepared to do that, Your  
16 Honor. If we could, if we could, we would move forward on  
17 those matters, which I think from an evidentiary point of  
18 view are closely related, so both their motion to approve  
19 their bidding procedures and our motion to compel immediate  
20 commencement of a fair marketing process.

21 THE COURT: Okay, let me just make a note here.  
22 Okay, so that goes with the other -- let's see, maybe it's  
23 not the same motion, but it goes with the motion: Rule  
24 7026, 9014 for order authorizing prepetition lenders to  
25 seek expedited discovery. That's all tied together with

1 that, as well?

2 MR. CHEHI: I believe so, Your Honor.

3 THE COURT: Okay. The next matters will be  
4 dealing with the debtors' motion for approval of bidding  
5 solicitation procedures that are also tied with immediate  
6 commencement of marketing process and the discovery  
7 motions. I'll take those up together. It seems like  
8 they're all interrelated.

9 So Mr. Patten or Mr. Chehi.

10 MR. CHEHI: Either or, whoever you want to go  
11 first. I think we'd just call our witnesses for those  
12 purposes. We'll let --

13 THE COURT: I'll let Mr. Patten proceed or  
14 appropriate counsel proceed on the motion for approval of  
15 bidding and solicitation procedures.

16 MR. REAM: Good afternoon, Your Honor. Larry  
17 Ream from Bullivant Houser Bailey.

18 I'm going to call Ron Greenspan. I just wanted  
19 to say thank you for allowing me and my firm to  
20 participate --

21 THE COURT: Certainly.

22 MR. REAM: -- in this matter and these  
23 proceedings.

24 And I would call Mr. Greenspan.

25 THE COURT: Okay. Mr. Greenspan, I will recall

1 you to the witness stand. I'll remind you that you're  
2 still under oath.

3 DIRECT EXAMINATION

4 BY MR. REAM:

5 Q. Mr. Greenspan, there has been a great deal of comments  
6 regarding what the debtor has and hasn't been doing, and so  
7 I think there are a couple of items I'd like you to cover  
8 generally for the judge before we get started, and  
9 specifically about the bidding procedures motion.

10 Since 12/15/08 when the DIP loan was approved, what  
11 have you and the debtors been doing to move this case  
12 forward?

13 A. Well, I don't think we can separate operations and the  
14 progress that's been made there from the general  
15 reorganization and moving the disclosure statement of plan  
16 forward. So we've been handling everything necessary in  
17 order to successfully and, as best we can, economically  
18 operate the debtor.

19 We've been supervising the expenditures and the draws.  
20 And I can tell you that through last week, our budget was  
21 13 million. We've only spent about 8.3. Some of that's  
22 tiny difference, but there have been very real and  
23 substantial economies. So we're running meaningfully ahead  
24 of the DIP budget. We, in addition to hiring everybody  
25 that was happening at that week - hiring them, deploying

1     them, getting open for the season - we had major other  
2     issues like Farcheville.

3             And, Your Honor, I don't know how accurate your  
4     description of strangling the debtor is. Things that  
5     should have been simple like Farcheville -- I mean we had a  
6     situation where a relatively small amount of money was  
7     needed, but we were under the very real threat of imminent  
8     seizure by the tax authorities in France. And you -  
9     (inaudible) - sheriff's auction of it, and there would have  
10    been 10s of millions of dollars of value lost to this  
11    estate and to the unsecured creditors. We couldn't  
12    consensually get a deal there to get the necessary money  
13    into the estate. And you saw the motions. It was two  
14    weeks of my time around the clock with all the parties just  
15    to get the money, the \$3 million or \$2 million for  
16    Farcheville that should have been a no-brainer.

17            We then went on and, during the next period, we've had  
18    the liability -- the - (inaudible) - insurance, we suddenly  
19    found out 48 hours before that was to expire that that was  
20    expiring. And we have a tail on it, but we had to -- we  
21    contacted all the parties to get all claims that they knew  
22    of, and we scrambled - again, an around-the-clock type  
23    thing - in order to get the appropriate claims filed.

24            We now have our CGL, comprehensive general liability  
25    policy, that's up for renewal with challenges to that

1 renewal because they are owed money prepetition as well as  
2 it's always tough, both a ski resort and a debtor.

3 So you have those nonstop issues in the operations  
4 which -- some of which you would expect, but others should  
5 never take this type of time and effort to get done. But  
6 immediately after -- simultaneously, immediately after, we  
7 moved -- as I said before, we had discussions with Credit  
8 Suisse and with the unsecured creditors committee.

9 Q. Mr. Greenspan, before you go on, would you explain to  
10 the judge, though, how the actual operations of the club  
11 have been going? How is it -- how are the members  
12 reacting? How have operations actually occurred coming up  
13 through the -- what, the busiest weekend of the ski season?

14 A. Well, this is the busiest other than -- Christmas to  
15 New Years is the busiest, and then the week before and the  
16 week after president's holiday is the second busiest up  
17 until the Easter break week. So this is a peak period, the  
18 week we're just finishing now and next week.

19 I mean I think the best indication is we set the bar of  
20 getting 80 percent of the members to pay their dues. And  
21 we're at just about --

22 THE COURT: You said "80"?

23 THE WITNESS: Eighty percent. That's what -- if  
24 you remember, that was required in the Credit Suisse, it  
25 was carried on over into the CrossHarbor. We are right now

1 just about 95 percent paid. And we launched an intensive  
2 -- both what I'll call an internal marketing as well as a  
3 collection effort in order to ensure that they're paid.  
4 And we've also -- we early sent out the second-half  
5 payments, and we're well on our way towards collecting the  
6 second half of the dues payments. I think that's probably  
7 the best indication of whether you have the members buying  
8 in.

9 We, for the most part, have been able to keep  
10 goods coming to the estate. There's been a few issues, but  
11 we've just had to change vendors. But this, as you  
12 probably know, Your Honor, was not a planned bankruptcy.  
13 There were employees who were left with a week of unpaid  
14 wages, there was no plan on paying, you know, important  
15 vendors before filing, or anything of that nature. So the  
16 fact that operations are running, I think, as smoothly as  
17 they are is a tribute to the staff who's here who have just  
18 been -- you know, even though they weren't paid and  
19 there's, you know, all - (inaudible) - issues about their  
20 future, the staff's done tremendous job. And I think the  
21 community, the members have gotten behind what's happening  
22 at the property.

23 So concurrently with doing the operations and  
24 handling the inevitable emergencies and then spending just  
25 an inordinate amount of time doing things that should have

1 been much easier than they were, talked to Credit Suisse  
2 and unsecured creditors committee, and they wanted a broker  
3 retained. As I testified earlier - and I'll try not to  
4 repeat what I talked about earlier - I didn't necessarily  
5 agree with that decision but agreed to it and went out on a  
6 solicitation process for a broker, both -- I identified a  
7 real-estate broker and an investment banker, Credit Suisse  
8 provided a name of a real-estate broker and an investment  
9 banker, and I went to all four of those parties soliciting  
10 proposals. And we were doing this literally over  
11 Christmas. I mean if you look at the timing of what's  
12 happening here, this is -- we started in the week between  
13 the 16th and the 20th. We're doing this literally over  
14 Christmas and New Years.

15 And it's a complex brokerage solicitation  
16 process. Ultimately, we ended up negotiating arrangements,  
17 had to negotiate with all four of those parties; ultimately  
18 selected and negotiated what I think is a very, very  
19 advantageous brokerage agreement that we can talk about.

20 Q. (By Mr. Ream) Mr. Greenspan, let me interrupt you a  
21 second and back you up minute. Specifically, though,  
22 before you move to the brokerage issue, will you explain to  
23 the judge what efforts you've made to negotiate with  
24 specific parties a consensual plan? What efforts have you  
25 undertaken to actually bring parties together to try and

1 resolve this case?

2 A. To a certain extent, what I am -- I mean, well, I am  
3 both a protagonist, but I'm, to a certain extent, what I'd  
4 describe as a mediator. The debtor itself does not have  
5 the capacity with -- I mean you can take everybody that's  
6 sitting from there over on that row, the debtor with those  
7 people together don't have the capacity to a plan. I mean  
8 we have no more funding after May 1st. We're going to go  
9 through \$25 million. A bunch of it's bankruptcy-related  
10 costs. We're going to go through \$25 million, and we are  
11 going to have an inability to continue operations as of May  
12 1st. There's got to be somebody to step up and fund those  
13 operations as well as fund the ongoing development. That  
14 requires a capital provider to come into the situation.  
15 And so the debtor by itself and the debtor with the  
16 committee and the debtor with Credit Suisse doesn't have  
17 the capacity to solve that absolutely vital issue.

18 Therefore, my concept of what's necessary in order to  
19 effectively get a plan here is that we need a capital  
20 partner in the process. And beginning right after the  
21 15th, we began to put together everything that's necessary  
22 for the prospective capital partners to evaluate making an  
23 investment.

24 THE COURT: After the 15th of --

25 THE WITNESS: Of December.



1 THE COURT: Okay.

2 THE WITNESS: I mean up until that point, we had  
3 no assurance of anything. I mean we -- and we were very,  
4 very busy doing something else. So beginning with the  
5 15th, we began to put together all the information  
6 necessary. I mean we had been work on it before, but I  
7 mean doing it seriously and in earnest, putting together  
8 the documents, the electronic data room; putting together  
9 what we call a "teaser", but in this case it's a really  
10 much more comprehensive, describing the history of the  
11 project, what the assets are, what somebody who would be  
12 getting in involved in would be getting involved in,  
13 describing the club, and so forth.

14 Simultaneously with -- we put together the data  
15 room and simultaneously began contacting parties out in the  
16 market to see what the market perception was of Yellowstone  
17 Club, what type of interest there would be. As has been  
18 talked about, we were in a fairly tumultuous economic time  
19 at that point; we still are. Things have, frankly, calmed  
20 down considerably since that date, I mean even looking back  
21 the six or eight weeks. We began contacting potential  
22 capital providers and simultaneously assembling the data  
23 room and simultaneously soliciting proposals from brokers  
24 and investment bankers.

25 Q. When you were thinking, Mr. Greenspan, about the way

1 the plan was going to have to be structured in this case,  
2 based on some of the comments you just made, what were your  
3 conclusions about whether or not this had to be a plan  
4 versus a sale, and why?

5 A. Well, part of is, is we always talked from the  
6 beginning -- I said when I was testifying before and we  
7 talked about it in chambers that I believe a plan makes  
8 more sense than a 363 sale for an asset that is this  
9 complex with this many moving parts, and it requires this  
10 much due diligence and prearrangement with various factors,  
11 parties, and factions.

12       Once I started talking to the market in late December,  
13 to me, that became overwhelmingly clear that the interest  
14 by people in the market was for the ability to essentially  
15 what I'll describe as ring-fence this and reduce the number  
16 of simultaneously moving parts that they could evaluate and  
17 that they could actually put a proposal or offer on. And I  
18 believe the best way to do that or the only realistic way  
19 to do that is through a plan and a disclosure statement  
20 where everything is both described as well as identified  
21 and that you've already prescribed treatment for some of  
22 the biggest, what I would describe as question marks and  
23 moving pieces such as what's going to happen with the  
24 \$88 million of member deposit and the member agreements.  
25 Are they going to be rejected? Are they going to be

1 accepted?

2 Q. Mr. Greenspan, is --

3 A. (Inaudible, talking over each other.)

4 Q. I'm sorry to interrupt. Is the fact that

5 CrossHarbor -- I'm sorry, Credit Suisse does not have  
6 security in all of the Yellowstone Club assets a factor?

7 A. That's the second issue. And that is: This is an  
8 atypical situation, where you would have a 363 sale of the  
9 debtors' assets, of the encumbered assets would clearly be  
10 value-destructive. I won't repeat what constitutes the  
11 base lodge, but it is the heart of the resort. It's where  
12 the main lift goes to. It's the parking for the resort.  
13 This project and that mountain and these homes don't really  
14 operate without that. Credit Suisse doesn't have a lien on  
15 it.

16 I talked, again, in discussion with Credit Suisse and  
17 with the committee as to whether it made sense to try to  
18 package the encumbered and the unencumbered assets together  
19 and go to market with that. And I believe everybody was in  
20 unanimous -- at that time, they were. I don't know what  
21 they've decided since. At that time, everybody was in  
22 unanimous agreement that it made sense that you would want  
23 to put those together as a whole and that the allocation  
24 issues are going to be tough. You know, you're going to  
25 wrestle with those on how that's allocated. But the

1 conclusion was: We could get a much bigger pie, and we'll  
2 wrestle about the allocation issues later, but let's not  
3 let a fight over prospectively allocation issues now cause  
4 this to go south and have a much smaller pie for everybody  
5 to divide up.

6 Q. Is this any certainty to assumption or rejection of the  
7 membership contracts if you have a 363 sale versus a plan?

8 A. Well, I don't believe there's any certainty there.  
9 You're going to go to a 363 sale - especially in the time  
10 frame we're looking at - and then you're going to go to a  
11 plan. And there's no assurance as to what, "A", the  
12 debtors' going to do under that plan; or, "B", that the  
13 plan can even be approved.

14 And, therefore, once again -- I mean I'm a strong  
15 believer, and I haven't heard any meaningful argument to  
16 the contrary that this project has a higher value with  
17 member antipathy than with member support. And if there is  
18 going to be as full a recovery as possible for the  
19 unsecureds and secureds, it should be done with member  
20 agreements in place, possibly modified but with the support  
21 of the members. And that can't be done, as far as I can  
22 see, in a 363 process.

23 Q. How does assumption or rejection affect value, in your  
24 opinion -- I mean in your experience and what you've  
25 learned so far, and in claims?

1 A. I'm not sure anybody has real experience in having gone  
2 through anything like this in full circle previously other  
3 than, I mean, you can point to some of the others that  
4 started earlier than us, things like Promontory.  
5 Promontory filed March of last year, also a Credit Suisse  
6 credit. You know, another very significant loan made a  
7 couple years ago with a very quick bankruptcy after that.  
8 They now -- I think they just had a hearing yesterday, but  
9 they still, 11 months later, do not have a buyer, do not  
10 have new equity coming in. I think they finally have  
11 resolved most of their issues. And I think they may, after  
12 11 months, be getting to a consensual deal, but once again,  
13 a priming loan.

14 It wasn't to me -- it's not a -- that is not the --  
15 that isn't a way to either maximize value and it's not a  
16 possible way to run this and certainly not something I'm  
17 interested in doing of just languishing and, in the  
18 process, spending the money.

19 Q. Well, if you just sell the dirt without the membership  
20 and the club in place, do you think that affects value?

21 A. I personally believe -- and as I say, I don't think you  
22 can point to any real examples because we haven't had any  
23 yet that I'm aware of. I think that would be very, very  
24 detrimental to value that --

25 Q. In your negotiations, have you been given any

1 indication from the unsecured creditors committee what the  
2 rejection damages might be if the member contracts are  
3 rejected?

4 A. Well, I've heard \$1 billion. And I think I could --

5 THE COURT: Did you say "1 million" or  
6 "1 billion"?

7 THE WITNESS: One billion. Your Honor,  
8 unfortunately, I don't think there are any millions in this  
9 deal. And I echo what Mr. Chehi said. I mean these are,  
10 these are big numbers, and I think everybody's taking this  
11 very, very seriously. I mean the liability to the members  
12 just on the rejection and the straight contracts is  
13 somewhere between \$80 million and \$88 million of cash that  
14 was collected from them. I think their argument for, you  
15 know, 10 or 12 times that number is those memberships were  
16 part and parcel an inducement for them to buy lots that  
17 they paid \$1 million to \$6 million or \$10 million for and  
18 to go and build very expensive homes on. And what the  
19 consequential damages, and so forth, would be, I think,  
20 leave up to anybody's guess.

21 So I think you've got both the denominator  
22 effect, the fact that they would begin to start swamping  
23 all the other unsecured and push down recoveries, but even  
24 more than that is anybody's willingness to tackle this  
25 asset and make the type of hundreds of millions of dollars

1 of investment that everybody agrees needs to be made to put  
2 that type of investment in here, without -- with either the  
3 antagonism or the hostility or litigation with the members,  
4 you're not going to find a buyer out there in the market  
5 today to do that.

6 THE COURT: Not to be facetious, but have you  
7 considered a bank holding company or anything like that for  
8 generation of any new capital?

9 THE WITNESS: Well, we'll see what Mr. -  
10 (inaudible) - says today.

11 But seriously, Your Honor, the right answer may  
12 be that Credit Suisse might step up and put the capital up.  
13 I mine that's -- that is a -- we wanted to get into the  
14 details, the specifics of the sale procedure, that we sat  
15 there; seriously looked at; and when we walked through the  
16 terms, tried to make it in a fashion that would be most  
17 conducive for that. And if not conducive, certainly get  
18 rid of all impediments for that.

19 But so what my -- going back to what I think your  
20 first question was - what I did as far as literally  
21 mediating and trying to bring it together - I can't  
22 unilaterally, and I can't with Credit Suisse, and I can't  
23 with the unsecured creditors, and the three of us together  
24 can't solve this. We need a capital partner.

25 And so I was both out in the market talking to

1 capital providers; and then secondly, working to get  
2 CrossHarbor - which it's clear, they've never, they've  
3 never hidden the concept that they would like to own this.  
4 That's no secret agenda. That's out there and open - get  
5 them talking to Credit Suisse because unless they could  
6 come together on terms, I can't get a consensual deal done.

7           Towards that, they hadn't arranged a meeting  
8 which all parties wanted to do. Due to the holidays, it  
9 was delayed, but it happened in the second week of January.  
10 I spent several days before that meeting talking with both  
11 parties, talking with the lawyers from CrossHarbor, talking  
12 with Mr. Byrne, I believe, talking with Mr. Yankauer,  
13 talking with my counsel; trying to, trying to shape the  
14 purpose of that meeting and what was going to happen at  
15 that meeting. As you've probably figured out, there's a  
16 little bit of antagonism going on. And my goal was, was to  
17 have a productive meeting that would advance the  
18 opportunity for a consensual resolution.

19           As part of that, as I said, we also invited the  
20 Credit Suisse financial advisors because there's clearly, I  
21 think, a difference of opinion about the project and  
22 difference of value view between Credit Suisse and  
23 CrossHarbor; at least ostensibly, there is. And what I was  
24 hoping was, was that the meeting would be an informational  
25 exchange, because unless they can get somewhere close on a



1 view of this - and the only way to get close on a view is  
2 through an informational exchange - then we weren't going  
3 to be able to make a lot of progress.

4 So we had the meeting. Brad Foster of my office  
5 was there in person, I was on the phone, Debtors' counsel  
6 was there, Loughlin Meghji was there, CrossHarbor was  
7 there, Credit Suisse was there, and Credit Suisse's  
8 financial advisors.

9 Credit Suisse's financial advisors had wanted to  
10 be out on the property at that time, and I suggested, "Go  
11 to the meeting, listen, then go to CrossHarbor, get as much  
12 information as you can from them, then come out to the  
13 property and spend whatever time you want on the property  
14 with us and with documents." And this is, in fact, what  
15 happened.

16 And so they went up and they spent time at  
17 CrossHarbor's office, I think a day, and then they came out  
18 to the property. And I tried to encourage those parties to  
19 come to a resolution. Needless to say, Credit Suisse came  
20 back and said, "Pay us 310 million. That's what we want."  
21 I mean the negotiations -- (inaudible.) I mean, "We're not  
22 going to take less than 310. That's what we think it's  
23 worth. Pay us."

24 That didn't leave a lot of space. We were up  
25 against a deadline to get a plan filed. We're up against a

1 deadline even more so to get a broker working on marketing.  
2 And, therefore, we launched full scale into trying to put  
3 together a backstop, essentially the stalking-horse bid by  
4 CrossHarbor that could be put into a disclosure statement  
5 and a plan.

6 Q. (By Mr. Ream) Let me ask you a couple of questions.  
7 Is it still the debtors' goal to obtain a consensual plan,  
8 if possible?

9 A. Absolutely.

10 Q. I'd like to start talking about marketing and --  
11 because, obviously, you've read in the oppositions that  
12 there's been a great deal of criticism about the debtors  
13 not marketing. Do you think that criticism is appropriate?

14 A. I think the characterization of -- I mean the  
15 characterization about marketing is just wrong. We've put  
16 together the data room --

17 Q. Explain to the judge in detail, would you please, what  
18 the data room is? What's in there? Who's accessed it?

19 A. The data room is an attempt to put together all the  
20 documents - and we do it in electronic form - all the  
21 documents that a prospective investor or buyer would want  
22 to see so that they can quickly, efficiently make a  
23 decision.

24 And what you really want to do is lower the barriers to  
25 entry. You want to be able to get as many serious and

1 capable interested parties to the table as possible. So  
2 you do it electronically so they can access it. They don't  
3 have to deal with the weather and deal with the travel,  
4 they can access it essentially for free. And what it --  
5 and we put it together in two stages.

6 And I think, again, to preserve the value of this  
7 asset, you need to maintain some exclusivity. And there's  
8 also going to be confidential information about, you know,  
9 potentially about members, about sales leads, about sales  
10 prices. This is a nondisclosure state, as you probably  
11 know. The sales prices of transactions are not made  
12 public. The data room has all that by transactions, and so  
13 forth. So we want to be very careful about what is  
14 actually disclosed. We also have -- I mean the members  
15 are -- they may be relatively - (inaudible) - but they're  
16 still individuals and people, and they deserve a certain  
17 amount of privacy. And we've got potential records dealing  
18 with them there, as well.

19 So we've set up the data room in two fashions. The  
20 first is one that all people that appear to be, I'll call  
21 it, remotely qualified can actually get into. And that has  
22 the deal memo or the teaser, which is much more extensive  
23 in this case than is often done; and it also has a  
24 nondisclosure agreement.

25 People, to get in, once they go through that

1 information and - (inaudible) - nondisclosure agreement can  
2 then execute the nondisclosure agreement and, assuming  
3 they're qualified, they are -- they appear to be a bona  
4 fide and potential purchaser, they can then move into  
5 Phase 2 of the data room where you have a very  
6 comprehensive listing of documents dealing with the  
7 property. It's the financials, it's engineering studies  
8 it's environmental studies, it's the budgets, and so forth.

9 In addition, I took the index to the data room and  
10 circulated it amongst the interested parties and said,  
11 "Tell me what you think isn't here. I mean you want a  
12 robust process. Tell me what else you think ought to be in  
13 the data room."

14 As you would not be surprised in this deal, I spent a  
15 week negotiating the nondisclosure agreement with lawyers  
16 as to what the nondisclosure agreement was. And the  
17 nondisclosure agreement was, was fairly standard to start  
18 with, with a couple terms that I think just reflected the  
19 particularities of this particular deal; and then, as I  
20 said, turned access to the data room over to everybody  
21 that's involved here: All of the creditors, the unsecured  
22 creditors committee.

23 In addition to the electronic data room, we also have  
24 available to us -- the engineer for the project has a  
25 hardcopy room. And anybody who wants to actually get in

1 and see all the engineering drawings, the engineering  
2 studies, and so forth -- those tend to be odd sizes. I  
3 mean very often, they're blueprints. They don't reproduce  
4 well, they've got funny backgrounds. So those are really  
5 not feasible to put up into the electronic data room, but  
6 anybody that wants that type of detail, they're welcome to  
7 access the physical data room, as well.

8 Q. What's been the response? How many -- you know, what  
9 kind of interest has there been, then, in the data room?

10 A. Far and away, the biggest response has been from the  
11 parties in this room. Credit Suisse has accessed quite a  
12 bit, the creditors have accessed. What we have found --  
13 and that's why this is informative, and then informs how we  
14 fashioned -- the other reason why I said when we talked to  
15 the market, why we fashioned the plan the way we did - and  
16 so that makes a lot more sense than trying to do a 363 here  
17 - is that the market reaction has been very muted, that  
18 everybody that -- we've approached Credit Suisse, we've  
19 talked to -- we've given access to the data room, we've  
20 offered to give tours, too, up at the property.

21       Everybody who's contacted us - because this has gotten  
22 a lot of publicity - so everybody's who's contacted us,  
23 we've done the same type of introduction; gave the same  
24 opportunity both with the data room, the property; as well  
25 as made an outreach to a number of what I and what the head

1 of my investment banking group feel were some of the most  
2 likely interested parties in pursuing this.

3 And to date, a number of them have accessed the data  
4 room, but what I'll seriously describe as a disappointingly  
5 few number, that the market -- this is a very challenging  
6 asset. It requires a very big bite. I mean we're talking  
7 about at this stage 100 million-plus commitment upfront  
8 plus at least another 75 million of cash commitment, and  
9 with some tremendous uncertainties. We've talked about  
10 before there's only 33 platted lots. Everything else is on  
11 the come. The engineering studies are not complete. There  
12 are EPA violations that's under a remediation agreement  
13 that causes people to have concerns. It is a high-,  
14 high-risk project on a go-forward basis requiring a lot of  
15 money up-front, a lot of money over the years, and  
16 continuing operating losses for many years.

17 Consequently, there were a limited number of people  
18 that have accessed it, but what it also -- we learned a lot  
19 from talking to the market and what prospective buyers were  
20 telling us, to be interested in the process, what they  
21 wanted to see. And that's what we tried to fashion into  
22 this bidding procedures -- (inaudible.) So we -  
23 (inaudible) - it based on the market.

24 There's been a total of about 40 people, I believe,  
25 that have accessed the data room. I think we're talking

1 about approximately five of them are prospective, outside  
2 buyers. CrossHarbor, of course, has been in the data room,  
3 and the lenders make up the balance and some of the staff  
4 at Yellowstone Club make up the balance.

5 Q. Before you move on to what you learned from the  
6 potential investors, and that, that you contacted directly,  
7 were there other marketing efforts that you personally,  
8 staff, professionals in this case have done to market this  
9 property?

10 A. Yes. But for completeness, let me just --

11 Q. Sure, all right.

12 A. The last -- I'm sorry, I -- I guess I took a breath.  
13 One party has -- and I think you saw that in a footnote  
14 because all this is happening in real time and we're still  
15 doing it. One party has actually been aggressively going  
16 forward, has -- the only party that has actually come on  
17 out to the site, that has made some meaningful  
18 investigation of the data room. After you've done this  
19 long enough and gone through enough deals, you can see how  
20 long people are in the data room, how many documents they  
21 access. All that's recorded. And we give that record to  
22 Credit Suisse. We give that record to Credit Suisse and  
23 anybody else who's involved who wants to see it so they can  
24 at the same time monitor this.

25 You're getting relatively little action except for from

1 this one party. We're providing them -- we have an NDA in  
2 place with them. They came out to the property and spent  
3 two full days on the property. We provided them with all  
4 the documents that they could want, we responded to the  
5 questions. And so we do have one party that is exhibiting  
6 some action. The last week has been somewhat disappointing  
7 with them, but I just don't want it to go -- leave you with  
8 the impression that nobody was -- had been taking those  
9 extra steps.

10 Q. Let me go back even just one second to what you said.  
11 So what reports do you provide to Credit Suisse?

12 A. Well, apart from the financial reporting, we do have a  
13 detailed report that lists every person who's accessed the  
14 data room, how many times they've accessed it, how many  
15 documents they've opened, the cumulative time they've been  
16 in the data room. You know, and so we've got some people  
17 who have been there 20 hours, 30 hours, 40 hours; and  
18 others who, you know -- if somebody professes to be a  
19 buyer, an interested buyer, and they've looked at two  
20 documents and they've spent a cumulative two and a half  
21 minutes in there, you know they're not for real. So we  
22 provide those reports. And, frankly, if there's any other  
23 report that anybody wants, I'm more than willing to provide  
24 it.

25 Q. Be careful what you offer.



1 A. I will provide it.

2 Q. So my question when I interrupted you when you were  
3 breathing was: What have you and other staff at the  
4 Yellowstone Club and professionals been doing in advance of  
5 today to market this club, these assets? What have you  
6 been doing?

7 A. I mean the data; room, the deal memo or teaser; the  
8 NDA, the nondisclosure agreement, getting that into form;  
9 and then, as I said before, the outreach to every person  
10 who's contacted Credit Suisse or who has contacted us; and  
11 then an affirmative outreach to a number of parties that  
12 were viewed as some of the most likely to be interested and  
13 to give us feedback as well as the outreach to the  
14 brokerage and the investment banking community in order to  
15 find someone to retain to do this as requested by, by  
16 Credit Suisse and the committee. And it's been trying to  
17 follow through and fulfill the -- fulfill each of those as  
18 well as respond to all of the requirements of those  
19 parties.

20 Q. And you mention that you had solicited from brokers and  
21 investment firms an opportunity to bid on marketing this  
22 property. Could you explain to the judge what you did  
23 there and what resulted from it?

24 A. What I did was identified -- this is something of a  
25 hybrid between real estate slash kind of a business

1 opportunity; and, therefore, I didn't want to restrict the  
2 search to just the traditional investment banker, just the  
3 traditional realtor. Although, I think the larger realtors  
4 look a lot more investment banking firms and the investment  
5 banking firms in the real-estate section look a lot more  
6 like realtors, so I'm not sure there's that big of a  
7 distinction. But I identified an investment banking firm  
8 and a real-estate firm with world-class world reputation  
9 and solicited proposals from them. I talked to Credit  
10 Suisse. They provided the name of an investment bank --  
11 actually, I think they probably provided more than one name  
12 of each. They provided me a list. And from that, I went  
13 to what I think was one of the better realtors that were on  
14 that list as well as an investment banker from that list  
15 and solicited proposals. And over -- it took about a week  
16 to get all of them, but I did get good proposals from all  
17 four. I evaluated those proposals, and then a number --  
18 like in any case when you're dealing with these type of  
19 assets, there are a number of holes in them. I had to go  
20 back to them.

21 And then I identified a couple issues that could be  
22 very profound. For example, typically, an investment  
23 banking or a brokerage agreement reads you pay a commission  
24 on cash contributed plus assumed liabilities. And all of a  
25 sudden, we realized that there's potentially \$88 million of

1 assumed liabilities here for which the reorganized debtor  
2 is not going to get a penny of cash benefit from. And the  
3 question is: Does that get included in?

4 And a lot of buyers are going to be looking at this as  
5 potentially 200 million; if you take 100 plus 88 as a  
6 baseline, you know, a \$200 million transaction. And the  
7 question is: Do we really have to pay brokerage commission  
8 on that? We also recognize that the commission structure  
9 was all across the board.

10 So I went back and started negotiating both the  
11 commissions and the structure of the commissions, which  
12 were important, as well as the issue of: Are you going to  
13 include assumed liabilities?

14 And, typically, the answer is "yes", but they're  
15 typically small liabilities. Here, we're talking about  
16 something that could rival the purchase price.

17 So I engaged in negotiation with all four of them in  
18 order to negotiate both the fees, the structure of the  
19 fees, and how we'd be covered.

20 Q. And did you come to a conclusion as to which one you  
21 thought would be -- would best serve the estate and the  
22 creditors?

23 A. Yes.

24 Q. And how long ago was that that you came to that  
25 conclusion, roughly?

1 A. From today, four or five weeks ago.

2 Q. And why is it that you didn't hire -- or didn't at  
3 least bring a motion on to have them employed at that time?  
4 Was there a reason right at that time why you didn't just  
5 hire that broker and move forward?

6 A. Well, there's two predominant reasons. One, I believe  
7 we needed -- based on what I was hearing from the market,  
8 we needed more structure. You could not at that stage -- I  
9 mean that was two weeks after getting the DIP approved. We  
10 were still understanding -- we were still assembling the  
11 data room, frankly. To bring a broker on right now, the  
12 market was saying: We need more definition of what's being  
13 sold, where things stand.

14 And often with buyers, you're only going to really --  
15 probably some deals get stale. You're not going to go out  
16 with a half-baked deal to the sophisticated buyers, have  
17 them say, "No, it's half-baked," and then get the same type  
18 of response when you come back three weeks later and say,  
19 "Well, look at it again. Spend more analyst time. We've  
20 actually got our act together this time." That was one  
21 reason.

22 And the second reason was, is that -- went back to  
23 CrossHarbor, advised them of what we were doing, and  
24 CrossHarbor said they thought it was a violation of the DIP  
25 agreement for us to be marketing the property or listing it

1 with a broker. And we spent a period of time negotiating  
2 that. And I ultimately told them it was nonnegotiable,  
3 that I was going to continue to market the property. I  
4 felt that I didn't read the DIP agreement the same way they  
5 did. I was going to continue to market the property  
6 because we were getting good market feedback. And as long  
7 as there were people that were interested, that were  
8 talking to Credit Suisse or were talking to us, we were  
9 going to continue to pursue that, but that I would refrain.  
10 I did not want them calling the DIP, that I would refrain  
11 -- and go through yet another legal battle, I would refrain  
12 from signing the listing agreement or going live with the  
13 listing agreement until we've filed the plan. And they  
14 believed that's what -- actually what was required by the  
15 DIP agreement, as well as not marketing. But, as I said,  
16 we continued to market, but we agreed to refrain from  
17 actually executing the going live with a marketing program  
18 until we filed the plan.

19 We did use that time, though, to do the several weeks  
20 of premarketing and market campaign design, that if we  
21 waited until the 13th of this month, we would have been two  
22 -- farther before we could actually go live with the  
23 marketing program. So after selecting them, I spent the  
24 time negotiating their contract, the details of it,  
25 negotiating the application to employ, and working with

1     them to get the teaser right, to design the marketing  
2     campaign, to identify who's going to be approached, do  
3     everything that would otherwise be a waste of time after  
4     getting them approved, trying to get that done beforehand  
5     so we could hit the ground running once we get the green  
6     light.

7     Q.   Were you also negotiating with CrossHarbor to reach  
8     plan terms that were acceptable to CrossHarbor?

9     A.   During the -- basically, the last three weeks, yes.

10    Q.   And that was necessary -- is that necessary before you  
11    can have any broker or any marketing go live?

12    A.   Yes, because I -- as I said before, if I -- based on  
13    all the feedback from the market - and it doesn't surprise  
14    me at all - we need to stop some of the moving pieces in  
15    order to get serious money interested and to be able to  
16    start comparing -- get bids in place. As I say, I mean a  
17    lot of those issues deal with -- such as assumption of  
18    member contracts, other vendor issues, and just plan  
19    treatment issues. We need to have that ironed out before  
20    you can start talking to people about investing  
21    \$100 million plus into a venture, and get their serious  
22    attention in this market, and get it on short notice.

23    Q.   To your knowledge, have the debtors now filed an  
24    application to employ a broker?

25    A.   It took longer than we had hoped. We got it filed this

1 morning.

2 Q. And which broker are the debtors seeking to employ?

3 A. CB Richard Ellis.

4 Q. And would you explain to the judge what a standard fee  
5 would be in the marketplace and what the fee that CBRE has  
6 agreed to?

7 A. I would normally say a typical fee in the marketplace  
8 would be 1.5 to 3 percent, and maybe a little more in a  
9 bankruptcy context because the uncertainty and the  
10 difficulties.

11 I can tell you that one of the parties that we went to  
12 wanted 5 percent. It was not negotiable on that. And I  
13 talked to Credit Suisse about that and I talked to the  
14 committee, and everybody was in unanimous agreement that  
15 that was a disabling fee demand. They did agree not to  
16 charge it on the assumed liabilities, just on the purchase  
17 price, but 5 percent was too high. So I would say 1.5 to  
18 3 percent is where I would typically expect would be a  
19 typical fee in this situation.

20 Q. In your discussions with potential  
21 investors/purchasers, did you learn any -- or what issues  
22 and impediments did you learn from them that you felt had  
23 to be addressed in any plan moving forward?

24 A. Not just in a plan, but in order to have an effective  
25 sales process -- and "sales process" is probably wrong. In

1 order to have an effective investment process - and we're  
2 really looking at somebody who's going to sign on and  
3 operate this enterprise - there were really three continual  
4 themes that were the reason why a lot of the people we went  
5 to just had no interest of even accessing the data room,  
6 getting at all involved with the project; and those that  
7 did initially access it deciding that after a quick look  
8 around, they had no interest in continuing to pursue a  
9 significant investment here:

10 One is the prospect and the issues of a credit bid. To  
11 do the due diligence that's going to be required here is  
12 going to take six figures. I mean I don't know if it's  
13 going to be 100,000, 200,000, 300,000, or more. It's going  
14 to be an expensive proposition, and it's going to take  
15 somebody at least a couple weeks. No matter how much  
16 material we've put together, it's going to be at least a  
17 couple of weeks. It's going to be a lot of meetings. It's  
18 going to be court hearings, and so forth. So it's going to  
19 be an expensive proposition. And there's - as often is the  
20 case, but particularly so here - a very big concern about a  
21 \$308 million credit bid hanging out there. And so even if  
22 somebody was offering value if it was less than that, they  
23 might be trumped by somebody who didn't have to do any of  
24 that, that work.

25 The second issue that we ran up against frequently,



1 again, as a reason people were not interested in spending a  
2 lot of money and time upfront is that CrossHarbor is viewed  
3 by the marketplace as having a big head start. And  
4 there's, there's no denying -- nobody, nobody's suggested  
5 otherwise that CrossHarbor doesn't know a huge amount about  
6 this asset and that CrossHarbor has been involved with this  
7 asset for a couple of years and that CrossHarbor is also  
8 interested in acquiring it. It's so out there that every  
9 buyer knows that, every potential buyer and bidder knows  
10 that. And they are concerned that CrossHarbor has  
11 knowledge they'll never gain just because of the work that  
12 CrossHarbor has done. I mean CrossHarbor has already spent  
13 all this money in spades. And so that was a reason people  
14 were giving that they weren't interested in pursuing the  
15 process. And that was a very frequent comment.

16 And I think the third issue is just the  
17 contentiousness, the litigiousness of this case, that this  
18 case is talked about a lot out there. It's picked up in  
19 the press. If you saw the AP, AP picks up a feed. And so  
20 it makes not just the business press and the bankruptcy  
21 press, but it makes the popular press throughout the  
22 country. And that isn't lost on people. And so when the  
23 potential -- again, we're talking about only people that  
24 have -- if you're going to devote a couple - \$300 million  
25 to this project, that means you're talking about people in

1 funds that have billions to invest.

2 Those type of institutions, given all the opportunities  
3 out in the world today - (inaudible) - interest in spending  
4 a lot of time on this in that structure. And so those were  
5 the three major issues that we saw that we real needed to  
6 attempt to ring-fence if we were to get a robust marketing  
7 process going.

8 Q. Was clarity in the structure or a process a factor,  
9 too?

10 A. It was. And I would have put that down in the third  
11 one. And that is: People that are doing that want some  
12 certainty. And without any type of bid or plan  
13 solicitation procedures act - (inaudible) - they're worried  
14 about certainty, they're worried by arbitrariness by me or  
15 by anybody else. And, you know, you add on to that the  
16 credit bid, you add on to that the head-start issues. And  
17 people were just concerned about, I'll call it  
18 transparency.

19 Q. So how does the bidding procedures and solicitation  
20 motion address those particular concerns?

21 A. I think we hit those three plus a lot of others as well  
22 as we could. And so what we've proposed is, is that we  
23 will file a disclosure statement and a plan and that that  
24 will describe the treatment of the major issues that are  
25 giving the -- what we perceive to be giving the market

1 concern if they're to be out there trying to buy the assets  
2 that they can't leave as an uncertainty at the time of  
3 purchasing the assets. And anticipating that their  
4 purchase -- not "their purchase"; their investment, their  
5 sponsorship of the plan is going to be subject to getting  
6 the plan approved, which will solve the treatment of those.

7 The first one with respect to the credit bid, what  
8 we've proposed is -- because this is a plan solicitation,  
9 that I'm not sure there are credit bid rights; and that if  
10 there are credit bid rights, that we've asked -- proposed  
11 that Credit Suisse come in and ask for those and prove to  
12 the Court that they have a credit bid right. And that's  
13 both the issue of it's a plan, but also we're selling  
14 together for a unitary price noncollateral assets. And  
15 everybody agrees - and I haven't heard anybody even voice a  
16 disagreement - that the assets combined aren't worth a lot  
17 more than the assets sold separately. So we're combining  
18 them.

19 What we did provide, though, is that if Credit Suisse  
20 can credit bid, we've got rid of all the stuff that might  
21 stand in the way. We've got rid of the fact that they've  
22 got to qualify to do it. We've got rid of the fact  
23 everybody else has to put up a \$10 million forfeitable  
24 deposit. That is not a requirement for Credit Suisse in  
25 our procedures. What we've tried to do is make it so that

1 they can step up and, as best I can describe it is, is  
2 replicate a credit bid in a noncredit bid environment, if  
3 the Court so allows. So I guess as far as that first issue  
4 of the market being concerned that you have a 500-pound  
5 gorilla out there that could trump them no matter what they  
6 did and no matter how fair value they were paying, I think  
7 we've circumscribed that.

8 The second issue deals with CrossHarbor's head start.  
9 And there's nothing I or anybody else can do about that. I  
10 mean that's a fact. They've been working for two years on  
11 this, and they've spent more money than any prospective  
12 buyer is going to spend, I mean hundreds and hundreds and  
13 hundreds of thousands of dollars and in stacks and stacks  
14 of studies and engineering studies, and so forth. The best  
15 I can do is both organize the data room, organize the hard  
16 data room, and get more time and get the bidders more time.  
17 And by doing -- what I did was, is I said, "We'd only be  
18 willing to go forward if CrossHarbor extends the term on  
19 the DIP so that we have the maximum time period possible.  
20 I want to be marketing this from the moment we file the  
21 disclosure statement and the plan up until the very last  
22 time." I think we say bids have to be in 10 days before  
23 plan confirmation; and that if there are overbids, we go to  
24 the bid process 5 days before plan confirmation. So I've  
25 attempted to give it as long as possible, the marketing

1 period. That's the best thing I can do to ameliorate their  
2 head start in the buying public.

3 And then, thirdly, the issue of, you know,  
4 transparency, the animosity which hopefully can be put  
5 behind everybody, the concept there was, is actually lay it  
6 out in a plan format, have procedures, have it be  
7 transparent. We've provided, for example, in the brokerage  
8 agreement -- provided that every one of the constituents,  
9 the unsecured creditors committee, and Credit Suisse get  
10 the weekly updates from the broker. We've required the  
11 broker to give updates of who's doing what, and so forth.

12 And, honestly, there's still issues we have to work  
13 through because the participants in the CrossHarbor loan,  
14 some of those are some of the most likely buyers for this  
15 type of asset. I mean their loan participants are largely  
16 hedge funds and venture funds and distressed asset buyers.  
17 And so a lot of those may be the ideal buyers. We've got  
18 issues -- we clearly have issues, if they're in the buying  
19 process, how much information you disclose. But what we've  
20 provided is, is that they essentially will be able to get  
21 all the information we get and that there is a defined  
22 court-ordered process. We've provided that if there is an  
23 overbid and we go to the bid process, that every party here  
24 with their lawyers and their advisors can attend. We've  
25 provided that the bid will be transcribed, the bidding

1 process will be transcribed. So what we've tried to do is  
2 make this as transparent and as organized as possible, and  
3 yet still leave enough flexibility that you don't  
4 bootstrap -- or not "bootstrap"; that you don't constrain  
5 the process unduly. And that's the balance we tried to  
6 strike.

7 Q. Does the plan that you've negotiated with CrossHarbor  
8 provide any advantages regarding the fact that there are  
9 encumbered and unencumbered assets?

10 A. Oh, I think it's -- when you say "advantages", I think  
11 from the estate's point of view, that the estate is  
12 substantially better off on twofold: One is being able to  
13 have somebody come in and gather all of the assets with a  
14 single offer, a fully functioning optimal situation; and,  
15 secondly, we're also providing -- the proposed plan will  
16 involve the contribution of land back into Yellowstone Club  
17 that will optimize development opportunity, as we talked  
18 about, the -- prospectively. And, again, this is not  
19 done -- this is all being done the last three weeks and is  
20 still underway, is prospectively the -- some of the land  
21 from the settlement and the CrossHarbor golf course lots  
22 would come back in. Because, again, those are lowland flat  
23 lots that the development could produce relatively similar  
24 -- when we talk about "relatively similar", we're still  
25 talking about two to three years away. So that's, you

1 know, the type of overhang that's on this project versus  
2 three, four, five years on hillside.

3 Q. Do the procedures that you've negotiated and have been  
4 outlined in the motion enhance bidding or chill bidding?

5 A. I think the procedures enhance bidding. I mean I don't  
6 know -- I, frankly, don't know anything in them that chill  
7 the bidding. There's a number of things that we went out  
8 of our way to be sure weren't in there that we rejected  
9 when they were requested, we negotiated away. And I'm  
10 not -- if you want me to, I can walk through them, but I  
11 don't know of anything in that that chills bidding. I  
12 believe the stalking horse provides some certainty. We  
13 know that there's a minimum of 100 million of value plus  
14 another 75 million that's going to come in here plus some  
15 additional land. There's a lot of value coming into this  
16 estate, a lot of value that will be available for the  
17 secured and unsecured creditors at a minimum and then bids  
18 above that.

19 I think that also by establishing a floor, you also get  
20 rid of the true looky-Lou's, I mean the people that are  
21 coming and saying, "This is a distress situation. They're  
22 fighting. Can I get it for 10 million, 20 million, 50  
23 million?" Those people are gone by this, and I think  
24 that's going to be a great economy to the Court and to the  
25 estate.

1           We kept overbids to what I really think is a minimum  
2 amount in an asset of this size on a transaction like this.  
3 The way we structured the breakup fee, there's a number of  
4 features in there that are not typical that I think are  
5 more favorable to us. For example, it only is paid if  
6 CrossHarbor loses. Often, the -- if there's overbids, the  
7 stalking horse gets to credit the breakup fee and the  
8 reimbursement. That is not in this case. But if they're  
9 the prevailing party, they get no breakup fee whatsoever  
10 and they pay the full costs of everything they've incurred  
11 to date. So that was a very advantageous feature.

12           As I said, we sat and took particular efforts with  
13 respect if Credit Suisse wants to participate, to reduce  
14 their barriers to entry. We structured it such that if  
15 somebody else is the prevailing bidder, CrossHarbor has to  
16 keep their offer open for seven days after the confirmation  
17 in case the prevailing bidder doesn't follow through.

18           You do have breaches. As we've seen both here and  
19 elsewhere, you do have breaches. They are obligated to  
20 leave their most highest bid open and stand ready to  
21 perform or else they still lose \$10 million if they were to  
22 default, as well.

23           We've taken as many steps as we can to have this be a  
24 process that will get people in and get robust bidding and  
25 have done everything we can to avoid the chilling -- any



1 chilling effect.

2 Q. Let me ask you a question: Are the effects -- I mean  
3 the fact that these assets are complex and difficult lean  
4 towards your conclusion about having a stalking horse?

5 A. Yes. There's great uncertainty about the value of  
6 these assets, and I think there's also probably great  
7 disagreement about the value of these assets. And given  
8 the state of the capital markets, I believe that if you, if  
9 you set a floor, you are going to tell buyers you are both  
10 serious and give them a prospective they've got to shoot  
11 above. And, also, we've structured it -- which goes with  
12 that, the brokerage fee we structured also encourages  
13 bidders and, frankly, encourages Credit Suisse that -- I  
14 negotiated the fee down to 95 basis points, less than  
15 1 percent. I also negotiated a lower fee if CrossHarbor is  
16 the prevailing, again, to encourage the brokerage company  
17 to go out and get somebody else. The brokerage company  
18 makes 20 percent more if they get a bidder that essentially  
19 comes in and just bests CrossHarbor by \$1 million. So it's  
20 a real incentive for them to get anybody in there over  
21 that.

22 And then if Credit Suisse comes in as the bidder, so as  
23 not to tax, for lack of a better word, the asset that  
24 they've got the security in for them to sell it -- for them  
25 to be the purchaser, I negotiated a brokerage fee down to

1 just 50 basis points, one-half of 1 percent if Credit  
2 Suisse is ultimately the buyer.

3 And I also negotiated that if this breaks down -- is  
4 the disappointment fee \$100,000? I think it's just  
5 \$100,000 if they've gone through all this effort, all the  
6 marketing, and we've got the right to cancel it. We put it  
7 in the document we have the right to cancel it. If we  
8 cancel it, I believe all they're entitled to is \$100,000.

9 So I think it is a very strong deal and is a strong  
10 deal that is designed in all structures and all effects in  
11 order to try to promote competition and be unchilling,  
12 promote them to bring in qualified parties to the table.

13 Q. Does CrossHarbor have the right to match any bid that's  
14 made?

15 A. No. And, again, that's the type of thing that stalking  
16 horses often ask for, often get. They have no such right  
17 here. (Inaudible) -- turn that down. This is a full and  
18 fair, open auction. And if somebody's higher, somebody  
19 else walks away with the reorganized debtor.

20 Q. CrossHarbor didn't ask for that, did they?

21 A. I can't tell you whether they did or didn't. I mean  
22 they -- what you're seeing is, is a roundly negotiated  
23 deal. There were a lot of things they asked for. Whether  
24 that was precisely -- I mean they asked for a lot of -- a  
25 lot more bid productions, they asked for higher overbids.

1 I mean they asked for the type of thing that somebody who's  
2 committing to, on a standby basis, guarantee that there's  
3 going to be \$100 million available plus additional  
4 investment and is agreeing to commit that and stand by for  
5 the next two and a half months and also to have their offer  
6 out and shopped around the world. They asked for a lot of  
7 things, and a lot of things are things that are not  
8 unreasonable; it's just we were able to negotiate them down  
9 from that.

10 Q. Well, they ask for a termination fee, and that's  
11 included in there. Why do you believe a termination fee is  
12 appropriate?

13 A. Two things: One, it's a significantly reduced  
14 termination fee from what they wanted; and, secondly, I  
15 think what I've described -- and that is we were asking  
16 them to do a lot more than be a buyer. We've asked them  
17 to, for the next two and a half months, stand ready,  
18 willing, and able. Every other person who comes to this  
19 gets to wait until 10 days before confirmation before  
20 committing. They can continue to look around, they can  
21 continue to do whatever they want to do, and they don't  
22 have to tie their money up.

23 We're telling CrossHarbor, "We are going in on February  
24 13th, and you are going to be committed with a \$10 million  
25 forfeiture if you don't stand there completely willing and

1     able."

2             Secondly, it's very infrequent to get that because you  
3     are -- they've done a lot of work, we've negotiated a lot  
4     of things, and they don't have a done deal. This deal is  
5     now going to go be shopped. It is going to be shopped by  
6     one of the best brokerage companies in the world.

7             And then, thirdly, as I said, we've also asked for  
8     additional concessions. For example, they have to stand  
9     behind their bid if they, in fact -- they have to stand  
10    behind their bid for seven days after the confirmation in  
11    case we have a default by the winning bidder, which again,  
12    is an extraordinary obligation, and somebody deserves to be  
13    compensated for doing that.

14            And then, finally, for providing the assurance that  
15    this estate, in fact, will be able to financially  
16    reorganize.

17    Q. Can CBRE start the marketing process beyond getting  
18    ready to go live if the debtors' motion to approve the  
19    bidding and solicitation procedures isn't approved?

20    A. Well, I don't believe so.

21    Q. And what would be -- if it isn't approved now, what  
22    would be the resulting delay that would occur?

23    A. Well, two things:

24            One, I've been pretty successful in prevailing upon  
25    them to work for several weeks now without anything

1 tangible. I would hope to be able to prevail upon them to  
2 continue to work in the face of a turndown of that. I  
3 can't assure that.

4 And then, secondly, it's just going to delay -- every  
5 day past the 13th that we can't be marketing is just going  
6 to foreshorten the marketing period.

7 And most of the papers that are filed in opposition  
8 complain that the two and a half months is too short, and  
9 every day we go beyond the 13th -- I mean I just find it --  
10 you know, again, it's the height of irony, you know, the  
11 whole strangle issue. What we're trying to do is start  
12 this as quickly as possible on the 13th. And the papers  
13 are saying: No, don't approve it now because the period's  
14 too short.

15 Well, all that's going to do is make it shorter. But  
16 that's kind of par for the course in this case.

17 MR. REAM: If I could have a moment, Your Honor.

18 THE COURT: You may.

19 Q. (By Mr. Ream) I just have one additional question,  
20 Mr. Greenspan.

21 You've read all the oppositions. Do you think the  
22 debtors' proposal is the best approach that the debtors can  
23 use to sell these assets based on the circumstances that  
24 exist?

25 A. I believe we've got the best of both worlds. I mean we

1 have an assured source of funds to reorganize, keep  
2 operating, continue development, and get a distribution out  
3 to secured and unsecured creditors; and, simultaneously,  
4 particularly with the extended period we negotiated, we've  
5 got the opportunity to have a robust marketing process.

6 The time obviously isn't ideal, but we don't have money  
7 to operate this come May 1st. And so I really do believe  
8 this is the best of both worlds. We've got an assurance  
9 and yet we've got an opportunity in what I believe is an  
10 unchilled, full, and fair process to solicit considerably  
11 higher offers if possible.

12 MR. REAM: No further questions, Your Honor.

13 THE COURT: Thank you. Mr. Saunders.

14 While he's coming to the podium, what are you  
15 proposing as a site for the bidding? I assume you have an  
16 alternative. It's kind of in brackets at this point.

17 THE WITNESS: Your Honor, we -- again, we believe  
18 it probably should be a place that -- we need two things:

19 We want it to be easily accessible by air. And,  
20 again, we are trying to do everything to minimize -- it's  
21 not going to be the property.

22 And we need -- I don't know if you've ever  
23 attended -- if this comes out the way we like it to -- I  
24 don't know if you've ever attended these. There tends to  
25 be a very large room, and then we need a large number of

1 breakout rooms. Because this is not -- you don't operate  
2 these as you sit everybody here, and you have an  
3 auctioneer, and you just go through, and everybody puts a  
4 paddle up. You have a round of bidding. That's why you  
5 have overbid limits or minimums, because you then break up,  
6 and you go and you literally lobby them, and you try to get  
7 them to raise their bid, and you come back in, and you have  
8 another round, and then you break off. And I've done these  
9 for two - three days like this.

10 We need a facility that's quite large that  
11 accommodates this. And part -- we've been comparing where  
12 we have offices and capacities. It's almost certainly  
13 going to be either New York, Denver, Los Angeles where  
14 people can get to, and offices -- my expectation, given  
15 where a capital source is likely going to come from today,  
16 it's probably going to be New York. It's the place where  
17 we -- you know, it's where you have firms like Skadden with  
18 the types of facilities that are designed just for this.

19 MR. SAUNDERS: Was that a compliment?

20 THE WITNESS: Yeah, you guys know what you're  
21 doing.

22 MR. SAUNDERS: May I begin, Your Honor?

23 THE COURT: You may proceed.

24 CROSS-EXAMINATION

25 BY MR. SAUNDERS:

1 Q. Mr. Greenspan, let me just sort of start with a point  
2 at the end. I think, if I understand the docket correctly,  
3 that the debtors filed an application to approve the  
4 employment of CBRE this morning and that the Court has  
5 approved that order.

6 A. Has approved it?

7 Q. Yeah.

8 A. Oh.

9 THE COURT: We issued an order.

10 THE WITNESS: Okay. Thank you, Your Honor.  
11 That's news to me.

12 Q. (By Mr. Saunders) But there's no reason why -- you  
13 expressed some concern that if CB Richard Ellis was not  
14 immediately unleashed, that there be even less time for  
15 them to market, right?

16 And so I guess my question to you: Is there any reason  
17 why we can't blue-pencil that agreement that you've reached  
18 with CB Richard Ellis to simply unleash them from the  
19 restrictions of the bidding and solicitation procedures so  
20 that the Court can approve or not approve the bidding and  
21 solicitation procedures as it sees fit, based on what it  
22 hears today, and still we can have CBRE get going?

23 A. And, I'm sorry, you used the term "blue-pencil". I  
24 don't --

25 Q. Right. Just amend, edit, amend, change.



1 A. Well, I think -- and look, I'm all in favor of getting  
2 them out there as soon as we can. They have to know what's  
3 going to the market, and the market's got to be able to  
4 look and see what is being offered.

5 I don't see any reason why they can't start making --  
6 well, there's two things. I don't see why they couldn't  
7 start making contacts. They've got nothing to offer. I do  
8 have an issue that I think -- I mean you would have to ask  
9 CrossHarbor whether they think it's a default under the  
10 DIP. I know it's not a default as of the 13th. If it's  
11 not a default as of now, I don't see any reason why they  
12 couldn't be out to the market, but only in the sense of  
13 you've got nothing to hand the market right now. You know,  
14 we've been working on the flyer, we've got the data room in  
15 shape. I think -- I don't see any reason why you can't do  
16 a pre-education, but you've got nothing to offer the market  
17 at this moment.

18 Q. Okay, fair enough. Let me just try to step back for a  
19 second and make sure that I understand the sequence that  
20 you're proposing. You're asking the Court today -- the  
21 debtors are asking the Court today to approve a proposed  
22 set of bidding and solicitation procedures for a subset of  
23 the debtors' assets, right?

24 A. That is correct.

25 Q. Okay. What's in a subset?

1 A. The subset is everything that is involved in  
2 Yellowstone Club that the debtor owns. And that's the, you  
3 know, the balance of the 13,500 acres that haven't been  
4 sold, so -- which isn't that which - (inaudible) -  
5 encumbered by CS; it also includes the lodge, which is not  
6 encumbered by CS; it includes the personalty that is there;  
7 it includes the intangibles, the trade names, trademarks;  
8 it will presumably include -- because they will be bidding  
9 for the equity in the reorganized debtor, it also will  
10 presumably include the treatment of the members that will  
11 be laid out in the plan and the disclosure statement.

12 Q. I'm sorry, when you say "presumably" -- so we don't  
13 know yet?

14 A. If I had a finished plan today, we would submit it, and  
15 they could be out marketing that. We are running all these  
16 tracks parallel trying to get it done in time and trying to  
17 get the marketing going as quickly as possible to give it  
18 maximum time. So it will be done, it will be done by  
19 Friday.

20 Q. Okay. But as it stands, you're asking the Court today  
21 to approve bidding and solicitation procedures on a set of  
22 assets, a subset of assets. And there's no piece of paper  
23 that we can look to to know exactly what's in and what's  
24 out; is that right?

25 A. No. I mean it -- I'm sorry. As far as the major

1 assets, I think it's well-known. And I mean I can  
2 represent, if it hasn't been filed anywhere, it's what  
3 everybody believes Yellowstone Club is. It's everything  
4 your client, it's everything your client has encumbered  
5 plus everything used there that is not encumbered by your  
6 client. It doesn't include causes of action; it doesn't  
7 include, it doesn't include Farcheville; it doesn't include  
8 the Scottish property. I believe it will include Buck's  
9 T-4 because of the employee housing component. And, again,  
10 I don't think your client has a lien on that, but it's  
11 integral to the, the permanent process at Yellowstone Club.  
12 But those are the assets.

13 We'd certainly -- by Friday, there will be a full list,  
14 but it's not, it's not mysterious, it's not convoluted.  
15 And if somebody thinks there's something that should be in  
16 there, we'll certainly -- that isn't, we'll certainly look  
17 at it. But I -- it's pretty well delineated.

18 Q. Not mysterious, not convoluted, but as of today, at  
19 least, it doesn't exist, right?

20 It's not -- there's no piece of paper anywhere that  
21 you've given people notice of or that you could hand me and  
22 say, "Here's the list of assets that are going to be in the  
23 subset that CB Richard Ellis is going to be marketing,"  
24 right?

25 A. I think that's right.

1 Q. Okay, thanks. Now, the procedures are also predicated  
2 on a stalking-horse agreement with CrossHarbor, right?

3 A. Yes.

4 Q. Okay. Has that stalking-horse agreement been approved  
5 by the Court?

6 A. No.

7 Q. Has it been presented to the Court?

8 A. It will be presented, presumably, Friday.

9 Q. Okay. So "no"?

10 A. Correct.

11 Q. As of today, "no", okay. Has it been finalized?

12 A. No.

13 Q. Okay. So there's not even an agreement or a final set  
14 of terms that you have agreed will be proposed on Friday?

15 A. We are -- that is correct. I mean I've told you and we  
16 tried to put in the papers where it was developed as of  
17 when we filed the papers, and we continue to work on it  
18 every single day. We've used the breaks here to work on  
19 it. We will be working on it from sunrise to sunset plus  
20 some tomorrow. Contrary to what you think, it is a real  
21 negotiation. This is not them dictating and handing a  
22 piece of paper; this is a back-and-forth real negotiation.

23 Q. Okay. That hasn't concluded yet?

24 A. That is correct.

25 Q. Okay. So CrossHarbor hasn't bound itself to anything

1 yet; is that right?

2 A. Presumably by Friday, they will be bound.

3 Q. Okay. But as of now --

4 A. And that's why we have these sales procedures going  
5 effective then, and that's why I say I don't think  
6 CB Richard Ellis could go out and tell somebody exactly at  
7 this moment. There's a good concept, they could  
8 pre-educate, but as of this moment, they haven't bound  
9 themselves to anything.

10 Q. Right. So if the Court enters the bidding and  
11 solicitation procedures as you've requested and then  
12 something changes in the world and CrossHarbor says, you  
13 know, "Because of" -- in complete good faith, "Because of  
14 these changes in the world, we just can't go forward with  
15 this deal anymore," then, you know, they're not bound,  
16 right?

17 A. I would have to read the actual terms, but I think we  
18 would have to do something different on Friday.

19 Q. You would have to file something different than a  
20 stalking-horse agreement that they had backed out of,  
21 right?

22 A. Correct.

23 Q. Yeah, okay. And the bidding and solicitation  
24 procedures are also predicated on the plan, right?

25 A. Yeah, the plan being filed, yes.

1 Q. Right. And the plan has not been filed, right?

2 A. Correct.

3 Q. Okay. And it hasn't been shared with any party in  
4 interest other than CrossHarbor, presumably?

5 A. No. We've discussed it with parties in interest, we  
6 put a description in our papers of the plan. I mean it's  
7 not wildly complex. It's the -- it's bringing an investor  
8 in for the reorganized YC and the rest of the assets into a  
9 liquidating trust which the existing debtor would have no  
10 interest in. And we've briefly described treatment, and  
11 we're working on defining the treatment and defining the  
12 other -- you know, getting down the details of the rest of  
13 the terms of the plan.

14 Q. Okay. And in addition to still negotiating the  
15 stalking-horse agreement, you're still negotiating the plan  
16 with CrossHarbor, right?

17 A. Correct.

18 Q. Okay.

19 A. Well, and internally. I mean we've -- we're trying  
20 to -- this is a complex legal situation. We're trying to  
21 present a plan that will be confirmable.

22 Q. Okay. And you expect to file it on Friday; is that  
23 right?

24 A. I'm hoping to.

25 Q. You're hoping to, right. Do you intend to share the

1 plan documents with anybody before you file it on Friday?

2 A. Probably.

3 Q. Okay. When do you expect to do that?

4 A. When we have something in a form that's strong enough  
5 to share.

6 Q. Okay. But you're not there yet?

7 A. We are not there.

8 Q. Okay. And under the DIP financing term sheet, the  
9 debtors are obligated to file a plan on Friday; is that  
10 right?

11 A. Correct.

12 Q. Okay. That's what's driving this, right?

13 A. Well, a lot of things are driving this. That certainly  
14 is one; and then, secondly, trying to do this at the speed  
15 of light so that we can get out and expose it to the  
16 market.

17 Q. And under the DIP financing term sheet, that plan has  
18 to be in a form and substance acceptable to CrossHarbor,  
19 right?

20 A. Correct.

21 Q. Okay. And if the debtors don't file a plan of  
22 reorganization that's acceptable to CrossHarbor by Friday,  
23 they'll be in default under the DIP financing term sheet.  
24 Is that your understanding?

25 A. That is correct.

1 Q. Okay. Did you ask CrossHarbor to extend that deadline?

2 A. Yes.

3 Q. And what did they say?

4 A. I got them to extend the back-end date. So in order to  
5 extend the marketing period, they wouldn't extend the front  
6 end, but any extension on the front end is just going to  
7 reduce the marketing period.

8 Q. Okay. And as a result of the fact that you have to  
9 file a plan that is acceptable to them, you've had to  
10 negotiate with them, right?

11 A. Yes.

12 Q. Okay. And if you didn't have that obligation to file a  
13 plan that was acceptable to them, then you wouldn't have to  
14 negotiate with them about the plan, right?

15 A. Well, I absolutely would negotiate with them. I mean  
16 they, like everybody else that's expressed an interest in  
17 being an interested bidder and they are to the table with  
18 cash, I would absolutely be negotiating with them.

19 Q. Fair enough. I understand you would like to -- you  
20 know, maybe you'd like to negotiate with everybody. But  
21 they have leverage with you that arises from the fact that  
22 you are obligated to file a plan on Friday that is  
23 acceptable to them, right?

24 A. To a certain extent, yes.

25 Q. Okay. In your negotiations with them, you have agreed



1 to things in the -- to their benefit that you wouldn't have  
2 if it weren't for the fact that you have to file a plan on  
3 Friday that's acceptable to them, right?

4 A. I am candidly hard-pressed to think of one that fits in  
5 that category because they've asked for a lot, but the  
6 guiding principle that I've stood by is - besides fair and  
7 open - is that it's got to be a confirmable plan. And  
8 there's a lot of things that particular creditors want, as  
9 you know, there's a lot of things that a potential buyer or  
10 a plan proponent would want that potentially engenders  
11 confirmability. I've got to get a plan confirmed two and a  
12 half months from now, and I won't put in that plan anything  
13 that endangers, in my mind, that confirmability. And with  
14 that -- as I say, this is going to be a relatively simple  
15 plan. With that, I think you're going to see a plan that  
16 is quite plain vanilla, that does not have all the things  
17 that Skadden would have demanded their client get.

18 I have said "no" far more than "yes". I don't, I don't  
19 see -- I think there's -- and if you've listened to what  
20 I've described, there's very little in there. I can't  
21 think of anything they've demanded that I haven't gotten  
22 out of there that doesn't belong in that plan or anything  
23 that they've used leverage to get.

24 Q. Okay. But you said "yes" to them on -- with respect to  
25 at least some of the provisions, right?

1 A. Correct.

2 Q. They asked for provisions that would not have been in  
3 the debtor-perfect version of this plan, right, and that  
4 you agreed to put in, right?

5 A. For example, in a debtor-perfect, if you could get a  
6 stalking-horse bidder to make all the commitments that they  
7 made without giving them a breakup fee, that would be a  
8 debtor-perfect plan. Is that realistic in any case? I  
9 don't think so. Is it realistic here? Certainly not.

10 So, yes, they asked for it. We negotiated it very  
11 heavily. I think it is as unchilling and as benign -- for  
12 example, provisions - (inaudible) - and we got a lot of  
13 benefit out of it in certainty, in dollars, and a  
14 benchmark. So I think we've -- the estate more than its  
15 benefit for that bargain. In a debtor-perfect world, I'd  
16 love them to do that and me not have to pay them any  
17 breakup fee at all.

18 Q. You asked -- you said this, right? I mean you asked  
19 CrossHarbor to permit an extension of the February 13th  
20 deadline, right?

21 A. Correct.

22 Q. And they said "no"?

23 A. Correct.

24 Q. What if they had said "yes"? You might have taken  
25 advantage on it, right?

1 A. Well, I don't know if I would have because I'm under  
2 unceasing - (inaudible) - attack for not having a long  
3 enough marketing period. And I know what's going to  
4 happen: If we put it off and took another two weeks to  
5 have an absolutely polished plan, you would be in here  
6 saying, "Your marketing period's too short by another two  
7 weeks."

8 Q. Right.

9 A. So we might even still have tried to get it done -- I  
10 mean we're doing this just as fast as we can. So we might  
11 still have tried for this Friday, but I've got to tell you,  
12 some of us are tired of being up 24 hours a day trying to  
13 get this done. So that's the real reason I would like it  
14 to be on the 13th. But for a purpose of marketing, I'd  
15 like to stick with the 13th and get this thing exposed as  
16 much as possible.

17 Q. Okay. If it weren't for the fact that you have to file  
18 a plan on Friday acceptable in form and substance to  
19 CrossHarbor, you would be filing a different plan than  
20 you're anticipating filing, right?

21 A. As I told you, I'm not -- I mean there's got to be  
22 something in there, but I'm sitting here today, and I can't  
23 think of what I would do differently. I would want to have  
24 a stalking horse that assures continuity, I'd want this  
25 type of clarity. I don't know what -- I mean we've taken

1 all protections out for CrossHarbor, we've reduced the  
2 brokerage commission if it's a CrossHarbor or CS deal. I  
3 mean I don't know what I would do differently if I didn't  
4 have to file it on the 13th. I think, you're right, I  
5 would sit and have more conversations with more people  
6 before filing; yes, I would. I would have more  
7 conversations with more people. But I know in this case,  
8 that's a long, torturous process.

9 Q. But there at least some things you would do  
10 differently?

11 THE COURT: You know, I think he's --

12 THE WITNESS: But not in, but not in the plan.

13 THE COURT: -- really answered the question.

14 THE WITNESS: I'm sorry, Your Honor.

15 THE COURT: I think he's really answered the  
16 question.

17 MR. SAUNDERS: Fair enough, Your Honor.

18 Can I approach, Your Honor?

19 THE COURT: You may.

20 Q. (By Mr. Saunders) Would you take a look at Exhibit 1,  
21 please?

22 A. Yes.

23 Q. Okay. And could you take a look at the restructuring  
24 benchmarks on page 5?

25 A. Yes.

1 Q. All right. Do you see Benchmark B, Subparagraph B?  
2 It's sort of in the middle of the page.

3 A. Yes.

4 Q. And then it's got a last sentence that says (quoted as  
5 read):

6 "Debtors shall be in default under the DIP loan  
7 unless debtors have filed the plan documents and  
8 solicitation motion on or before February 13, 2009; or,  
9 alternatively, the Bankruptcy Court has previously entered  
10 an order that terminates the debtors' exclusive period as  
11 of February 13, 2009," right?

12 A. Yes.

13 Q. Okay. So if the Court would enter an order that  
14 terminated the debtors' exclusivity period effective  
15 February 13, 2009, then you would no longer be obligated to  
16 file a plan in form and substance acceptable to CrossHarbor  
17 on Friday, right?

18 A. Well, no. I mean I, I made this point in -- I'm not  
19 obligated -- just like you say there, I'm not obligated to  
20 file a plan now. It's a breach of the DIP. But there's  
21 nothing in here that says -- there is no covenant on my  
22 part. This is a condition to the continued funding of the  
23 DIP loan. So that's why -- so whether the Court enters  
24 that or not, I'm not obligated to file that plan. I'm  
25 choosing to file the plan because, "A", it's the right

1 thing to do; and, "B", I don't want my DIP called because I  
2 can't make payroll next week.

3 Q. Okay. But if the Court were to enter an order  
4 terminating the debtors' exclusivity as of Friday, then -  
5 (inaudible) - obligation, right, it would no longer be a  
6 default under the DIP, right, if you chose to file a plan  
7 that wasn't, in form and substance, acceptable to  
8 CrossHarbor, right?

9 A. I think it would be -- well, I always read this to  
10 believe that that would be a breach of the DIP that would  
11 suspend their funding obligations. But maybe I'm wrong. I  
12 would have to read the entirety. Unless there is a -  
13 (inaudible, out of range of microphone) - or,  
14 alternatively, the Bankruptcy Court -- (inaudible.)

15 Oh, I see how you're reading that. And that may be --  
16 I mean I'll leave it up to the lawyers, but that may be. I  
17 see how you're reading that sentence. I would have to  
18 review the rest of the document.

19 Q. Okay. And had you focused on that in that way before  
20 my question to you?

21 A. No.

22 Q. Okay. In your direct testimony, I think you stated  
23 that you, you contacted some people in the market to talk  
24 to them about and try to engage their interest in the  
25 Yellowstone Club; is that right?

1 A. Correct.

2 Q. Okay. Did you keep logs of FTI contacts with potential  
3 purchasers or potential capital providers?

4 A. Kept some logs of those as well as -- you know, in my  
5 everyday business, I mean this is not the only matter I'm  
6 doing in my everyday business. You know, we're doing  
7 LandSource, which is another multi-billion-dollar land  
8 development project, and we're in constant contact with the  
9 people in the marketplace. And so I never lost an  
10 opportunity to, to get market feedback.

11 Q. Okay. And was there anybody at FTI doing that other  
12 than you, making those calls?

13 A. Brad Foster was doing some. Brad, as I said before, is  
14 on the property most of the time and has devoted full-time  
15 to this, as well as Kevin Schulz who runs my investment  
16 banking group.

17 Q. Okay. And did Brad and Kevin keep logs of their calls  
18 to people?

19 A. I don't know about logs of calls by Brad. I believe he  
20 kept records of contact. And Kevin is subject to the NASD  
21 - or whatever it's now called - requirements. So usually  
22 that requires logs, but I don't know what Kevin actually  
23 did since he doesn't have the mandate to market it.

24 Q. And how many people did you contact?

25 A. I personally -- well, I mean in an actual, an actual

1 list of people, besides the ones that contacted us, I went  
2 out to four that I felt would give me very good feedback on  
3 the market and potentially would have an interest.

4 Q. I'm sorry, four?

5 A. Hm-hmm.

6 Q. Okay. How many did Brad and Kevin contact?

7 A. I don't know the exact numbers.

8 Q. I'm sorry, you don't know the --

9 A. The exact numbers.

10 Q. Okay. Did they -- okay. When did you contact the four  
11 that you contacted?

12 A. Between the week after, between the week after our DIP  
13 was approved, so essentially the week before Christmas  
14 through mid January.

15 Q. Okay. And did you have more than one conversation with  
16 any of them, or one conversation each?

17 A. This were none that -- I did not. There were none  
18 that, after going through what this was about, that  
19 expressed an interest in pursuing any farther. I shouldn't  
20 say "none". Some of them listened, needed to go consult  
21 with their partners, needed to talk to their deal committee  
22 to see if there was any possibility of an interest. So a  
23 couple of them got back to me and said, "No, we're not,"  
24 but I had never had two substantive conversations.

25 There was nobody that we got through a full



1 conversation that didn't say, "We don't have an appetite  
2 for that as it stands today," or else didn't go away, come  
3 back, and say, "We do not have an appetite."

4 Q. Are you permitted to tell me who the four are? Please  
5 do.

6 A. Yeah, I think so. One is LNR, Lennar, one of the  
7 larger property investors in the country in doing --  
8 looking at a considerable number of distress deals; Canyon  
9 Partners; Regent; and another individual. I don't know  
10 what company he's with now but, you know, a gentleman by  
11 the name Lehrner.

12 Q. I'm sorry?

13 A. A gentleman by the name of Lehrner. I don't want what  
14 his company affiliation is right now.

15 Q. Warner?

16 A. Lehrner.

17 Q. Lehrner?

18 A. L-E-H-R-N-E-R, I believe.

19 Q. Okay. Did you give any of those four any written  
20 information about the debtors?

21 A. I don't believe -- well, LNR have gotten our teaser; I  
22 don't think the others did. Again, this is -- on many of  
23 these, given the status it was in at that time, it's pretty  
24 easy to rule out whether you have an appetite or not.

25 Q. Okay. And all of the four ruled out that they had no

1 appetite?

2 A. Well, right.

3 Q. Okay.

4 A. And, further, all four were -- all four knew of the  
5 property, all four knew of the project. They had either  
6 looked at it before or were aware of the press, had done  
7 some work to investigate previously.

8 Q. Okay. And how many parties other than -- as a result  
9 of everything that you did, done to date with the  
10 marketing, how many parties other than people who are  
11 already represented in the room signed confidentiality  
12 agreements to look at the data room?

13 A. I think there was only five or six confidentiality  
14 agreements that were actually executed.

15 Q. Okay. How many times have you been to the Yellowstone  
16 Club?

17 A. I personally have been there once.

18 Q. No, I -- once --

19 A. Hm-hmm.

20 Q. -- since you were -- okay.

21 A. Correct. I've got somebody there. As you can tell  
22 from what I'm doing, it's not very efficient for me to be  
23 out dealing with these issues at a place that doesn't have  
24 cell phone reception and doesn't have internet connection.

25 Q. Okay. So the entire time from your appointment in

1 November to today, you've been there once, right?

2 A. Correct. I can't do business there.

3 Q. Okay.

4 A. I've got some, I've got somebody who's there full-time,  
5 but I can't, I can't even make a cell phone call, I can't  
6 get internet, I can't get e-mails.

7 Q. Okay. If I remember correctly from your November  
8 testimony, you personally run the real-estate restructuring  
9 practice at FTI; is that right?

10 A. That is correct.

11 Q. And that's the largest real-estate practice in the  
12 country; is that right?

13 A. I think it's the largest real-estate restructuring  
14 practice, I believe.

15 Q. Okay. And so aside from being the chief restructuring  
16 officer for the Yellowstone Club, how many other active  
17 engagements are you currently handling?

18 A. Quite a few.

19 Q. More than five?

20 A. I would say if you're actually talking about open  
21 matters, definitely more than five; if you're talking about  
22 time, this is monopolizing my time.

23 Q. Okay. More than 10 other active engagements that  
24 you're responsible for?

25 A. Well, again, when you're talking about for what I'm

1 responsible for, in my position, I have another senior  
2 managing director or managing director working -- for  
3 example, Brad Foster, a managing director in the practice  
4 with 20-something years experience, is on this full-time,  
5 nonstop. So I have a Brad Foster or equivalent or multiple  
6 Brad Fosters or equivalent on every one of my engagements.  
7 So when you say "responsible", I am ultimately responsible  
8 for the engagement. I am spending the bulk of my time on  
9 this engagement.

10 Q. More than 20 active engagements that you're responsible  
11 for right now?

12 A. I don't think more than 20.

13 Q. Okay. You're not an expert in the marketing of real  
14 estate like this, right?

15 A. Actually, I'm a California licensed broker. I've let  
16 it go inactive, but I've been a broker since the mid '80s.  
17 I've probably bought and sold literally in each case  
18 hundreds of properties, all of which have been marketed. I  
19 mean I think I am.

20 Q. Well, let me ask you this: If you were not the chief  
21 restructuring officer or were not otherwise affiliated with  
22 the Yellowstone Club, right, would you have considered  
23 yourself within the group of realtors and investment banks  
24 who, you know, were considered for retention that  
25 ultimately led to CB Richard Ellis here? Do you operate in

1 that world?

2 A. Yeah, FTI does. I mean my -- what I was -- thought  
3 would be an effective, efficient process is -- FTI does  
4 have a licensed special-situations investment banker with  
5 full-time bankers that do that. And what we do on  
6 real-estate assets is we team up the licensed investment  
7 banker with the real-estate professionals and go to market  
8 that way.

9 So I would not -- I don't think I personally --  
10 although I do believe I'm an expert in marketing, I don't  
11 believe I personally have the time or the sufficient  
12 contacts to do this single-handedly or even a team under my  
13 guidance. But coupled with our investment bank, I'd put  
14 them up against anybody, but that was not what the  
15 creditors wanted here. And so I, within a day or two,  
16 deferred to their wishes.

17 Q. Okay. With all of the, you know, the burning bridges  
18 or the fires on bridges or all of the things that you've  
19 needed to deal with since you got involved with the  
20 debtors, wouldn't it have made sense as quickly as possible  
21 to delegate or download that marketing job to somebody, get  
22 that off your plate and get that to somebody like  
23 CB Richard Ellis?

24 A. Well, we did. I mean we went to them and three others  
25 within a week. I mean I, I spent the 23rd and 24th of

1 December chasing the CB Richard Ellis guy down at Disney  
2 Land in Anaheim. I mean he lives in Minneapolis. I chased  
3 him down at Disney Land with his kids on the ride  
4 negotiating the terms of the agreement.

5 I chased the guys from Florida on their ski vacation  
6 because I was trying to get this done. And, you know,  
7 silly me, I was actually trying have to have a vacation  
8 with my family, which didn't work.

9 I mean I chased these people down throughout that time  
10 trying to delegate this and trying to get them involved. I  
11 mean we negotiated four brokerage deals. We solicited  
12 them, we evaluated them. I then negotiated the fees, I  
13 negotiated the fee structure, I negotiated the member  
14 assumptions. I mean that was -- if you think this happens  
15 overnight -- I mean that's what we were doing, trying to do  
16 as quickly as possible.

17 Q. Okay.

18 A. So, yes, that's what was -- our goal was. I couldn't  
19 just turn around and hand it to them the next day and say,  
20 "Okay, 5 percent in members dues? Yeah, go. And, oh, by  
21 the way go out and sell it to a market that has no clue  
22 what it's buying."

23 Q. Okay. By this Court's hearing in January, okay, by  
24 around January 8th or 9th, actually, you had an agreement  
25 from CB Richard Ellis that you had circulated to Credit

1 Suisse and the creditors committee, right?

2 A. Correct.

3 Q. Okay. And you wanted to sign that agreement up, right?

4 A. I did initially.

5 Q. Right, okay. Because you think that more marketing  
6 efforts are necessary, right?

7 A. I would always like to have more than less, yes.

8 Q. Okay. You don't think that your, your calls to the  
9 four people, for instance, that that counts as fully  
10 canvassing the market, right? You think that somebody  
11 ought to be retained to do that, right?

12 A. I mean you're also ignoring every person who called us  
13 and who called the lenders. But I do, believe, yes, that  
14 there should be a canvas beyond that.

15 Q. Okay. And the reason why you stopped that was because  
16 CrossHarbor told you to, right?

17 A. I stopped it for two reasons, and it's what I've  
18 testified to:

19 One was that CrossHarbor said that would be a default  
20 and I would be in yet another fight in this case, which I  
21 don't need, over just the essence of my funding to keep  
22 operating.

23 And, No. 2, the feedback -- because I've been talking  
24 to people in the marketplace for a couple weeks at that  
25 point. The feedback coming from the marketplace was, as

1 presently structured, to walk out there and start selling a  
2 situation with the overbid, with the head start, with the  
3 hostility in this case, with the lack of rules of the game  
4 was not going to be productive.

5 So for those two reasons, what we did is we then  
6 switched into the gear of saying, "Okay, let's satisfy what  
7 the market's asking for. Let's get CB on board and  
8 preloaded to hit the ground running." And that's the tack  
9 that then followed.

10 THE COURT: Before you do your next question; in  
11 Billings, we are going to shut down the Billings site so  
12 the CSOs can go home.

13 So Mr. Guthals and Mr. Doak, we will see you on  
14 another occasion.

15 UNIDENTIFIED SPEAKER: Thank you, Your Honor. As  
16 I leave, may I ask the Court to please consider the  
17 objections that I have filed?

18 THE COURT: Okay.

19 UNIDENTIFIED SPEAKER: Thank you.

20 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

21 Q. (By Mr. Saunders) On January 8th or 9th you had an  
22 agreement with CB Richard Ellis at least in a position to  
23 circulate to Credit Suisse and the committee, correct?

24 A. When you say "an agreement", that had not yet been  
25 approved by the CB Richard Ellis hierarchy. What we had



1 was we had their document. We did our markup and, as soon  
2 as possible, I circulated it to you guys to get your  
3 feedback on it.

4 Q. Okay. And it's now February 10th, right?

5 A. Correct.

6 Q. Okay. So that's a month, right, that CB Richard Ellis  
7 could have been marketing, right, but for the fact that  
8 CrossHarbor told you to stop, right?

9 A. No, it's really not a month. I mean what we -- the  
10 reason why -- and I apologize to the Court. I mean the  
11 reason why you only had that filed today is they're a large  
12 organization, too. So once we then -- we spent a bunch of  
13 time on your comments. So when we circulated that to you,  
14 I don't know, what was it, a week before we finally  
15 resolved your comment and the committee's comments, we then  
16 had to turn that back to CB Richard Ellis. They are a  
17 large international company. We had to get their feedback;  
18 we then had to negotiate that; and then even after that was  
19 put to bed, I think it's taken us another week to get the  
20 employment application through their lawyers and their  
21 hierarchy.

22 So, no, if we got it to you on the 9th of January -  
23 which meant we worked over the holidays to get that done,  
24 which we did - we got it to you on the 9th of January, they  
25 might have been able to go live and get approval by the

1 Court maybe by January 20th or 25th.

2 And we filed this, what, a week ago? I think we filed  
3 our procedures a week ago. So, yeah, we probably lost a  
4 week.

5 Q. Your motion -- the debtors' motion says that  
6 CrossHarbor is the only party ready and willing to serve as  
7 a stalking horse. Is that a correct assertion, in your  
8 view?

9 A. I believe so.

10 Q. Okay. Did you ever ask Credit Suisse to make a  
11 stalking-horse bid?

12 A. I have talked to Mr. Yankauer, and Mr. Yankauer has  
13 said they would consider putting up a replacement DIP in  
14 order to give more time.

15 And I said, "Fine, give me a proposal," and I haven't  
16 received that proposal.

17 So in my conversations with him, he's never mentioned  
18 that they would want to be a stalking-horse bidder.

19 Q. But my question was: Did you ever ask him? Did you  
20 ever say, "Would you be willing to be a stalking horse"?

21 A. I don't think I ever used those words, but I could tell  
22 you with absolute certainty that if they had any interest  
23 in it, I would have heard about it.

24 Q. Okay. Did you ever ask anyone other than CrossHarbor  
25 to make a stalking-horse bid?

1 A. Other than East West, which -- East West Resorts -- and  
2 we can talk about them in a moment. Other than East West  
3 Resorts, I, to date - and this includes everybody who's  
4 come to us and everybody who's come to Credit Suisse, so  
5 they have an interest in the asset - I've been unable to  
6 get any of them to commit to due diligence.

7 Nobody will give a stalking-horse bid without having  
8 done due diligence because they're committing themselves to  
9 a price and a \$10 million forfeiture. So I mean I'm a  
10 month away from getting somebody else that's a  
11 stalking-horse bidder. I mean I can't get people to  
12 Square 1. To be a stalking-horse bidder, you've got to be  
13 at Square 5 or 6.

14 Q. You said, I think, in your direct testimony that it  
15 would take at least, at last two weeks for somebody to get  
16 to a position of being comfortable with making a proposal;  
17 is that right?

18 A. I believe so.

19 Q. Okay. When did the data room open?

20 A. I think we finally got everything - (inaudible) - live  
21 on the 16th of January, or so.

22 Q. Okay. And when was the deadline that was stated for  
23 proposal?

24 A. We extended that out to -- well, when you say -  
25 (inaudible) - by that time, it was very clear in my mind

1 that, given the circumstances, we were not going to have  
2 anybody that was going to advance through the process. So  
3 I technically extended the deadline out to January 30th  
4 with everybody I was dealing with, knowing that that was  
5 the absolute latest date for them to put an a proposal,  
6 that we could still get a plan written and filed by the  
7 13th.

8 Q. Okay. But the deadline that was stated when the data  
9 room opened was the 22nd of January, right?

10 A. My personal -- I mean, again, dates are mushy as to  
11 what was in that data room at what particular date. I  
12 think by the time we got to the 16th, we had extended it to  
13 the 30th. If we hadn't, as soon as we realized it -  
14 (inaudible) - the 22nd, we extended it. But people had  
15 been getting the teaser before then. The fact that the  
16 data room itself -- the people had been getting every piece  
17 of document that I had asked for. We just didn't have the  
18 data room up and ready at that point.

19 Q. Just a minute. I just want to ask you some questions  
20 about the bid procedures.

21 MR. SAUNDERS: May I approach, Your Honor?

22 THE COURT: You may.

23 Q. (By Mr. Saunders) Mr. Greenspan, do you recognize that  
24 to be the document I think you've described as the teaser  
25 and the data -- (inaudible)?

1 A. Yeah, it is a version of it. I would have to go  
2 through to see what -- I mean this -- again, we are  
3 constantly, to the extent we can, updating or refreshing  
4 the information. People point out errors. And one of the  
5 things we asked your clients to do is to go in, look, and  
6 tell us -- and we asked CrossHarbor to do the same, "Go in  
7 and tell us every area you see there; not just omissions,  
8 but commissions and anything else that should be there."

9 But so this document is constantly being updated. So  
10 this, it does look like - I'm sure it is - a copy, because  
11 it has -- when somebody downloads, for example, Your Honor,  
12 out of the room, it automatically stamps the name of the  
13 party that downloaded it so that if anybody photocopies  
14 this and disburses it around despite the NDA, we can always  
15 trace it back to see who did -- and it has the date and the  
16 time stamp on it that's automatic coming out of the data  
17 room. So, yes, this came out of our data room, and it is,  
18 as of February 5th, a teaser.

19 Q. Right. And you see at the bottom of the second page,  
20 it states that the deadline for submitting bids is January  
21 22nd?

22 A. That is what it says.

23 Q. Okay.

24 MR. SAUNDERS: May I approach again, Your Honor?

25 THE COURT: You may.

1 MR. SAUNDERS: Your Honor, I've handed the  
2 witness a copy of -- it's Docket No. 322. It's the motion  
3 for approval of bidding and solicitation procedures  
4 regarding proposed sale of 100 percent of the equity  
5 interest in the debtors' pursuant to a plan reorganization.  
6 I have another copy for Your Honor if --

7 THE COURT: I have it up.

8 MR. SAUNDERS: Okay.

9 Q. (By Mr. Saunders) Mr. Greenspan, I want to ask you  
10 some questions about the qualified alternative bid rules  
11 that start on page 9 and go on to page 10.

12 A. Yes.

13 Q. Okay. Actually, let's start on Subparagraph B. It's  
14 the top of page 10. The last phrase of this Subparagraph B  
15 requires that in all cases, the debt component of the  
16 purchase price shall not exceed the amount of the debt  
17 component set forth in the plan. Do you see that?

18 A. Yes.

19 Q. Okay. Of course, there is no plan yet, but what do you  
20 anticipate is going to be the debt component set forth in  
21 the plan?

22 A. I believe it will be \$70 million.

23 Q. Okay. And that's the debt component that is provided  
24 in the -- at least proposed CrossHarbor stalking-horse  
25 agreement?

1 A. Correct.

2 Q. Okay. What's the point of that provision?

3 A. It's twofold. Again, everything is an attempt to  
4 strike a balance. And I've had this discussion with Credit  
5 Suisse, whether we can get higher offers if there is an  
6 opportunity to have some of the purchase price financed.  
7 And it's usually a belief that you can; and in this market,  
8 I think it's clear you can get better offers if there is a  
9 finance component.

10 And in my discussions with Mr. Yankauer, he's  
11 repeatedly said that if we have a buyer who is interested  
12 and is interested in talking about financing, that I  
13 certainly can send them to Mr. Yankauer to talk about that.

14 So we've had, you know, ongoing discussions regarding  
15 the potential of financing. If someone wants to pay out  
16 cash, they can bid all cash. The reason we capped it is  
17 that there is a limit to how much leverage any viable  
18 reorganized debtor can sustain. As we know, this property  
19 is operating at a negative cash flow. It's going to  
20 operate at a substantial negative cash flow probably for  
21 several years. And to load up an excessive debt burden on  
22 top of that as well as to sell it, potentially, to  
23 somebody, to -- or not sell it because they're making an  
24 investment - (inaudible) - reorganized debtor; to have  
25 somebody come in with an insignificant amount of equity

1 will not be a feasible plan.

2 We've got to pass feasibility both in front of this  
3 Court as well as in practicality. And looking at that, it  
4 was my considered opinion that the maximum debt that seems  
5 reasonable on this property would be 70 percent of this  
6 initial bid amount.

7 It also will make it easier -- again, we talked about  
8 that third element that the market is saying when the  
9 market is saying: Give us a clear set of guidelines. We  
10 want to know how we can put an offer out, how our offer is  
11 going to be judged, and we want to know that this isn't  
12 going to be an arbitrary situation.

13 So instead of starting to have people mix potentially  
14 debt and cash, and so forth, we came to the conclusion that  
15 we can have a much more transparent, and much fairer, a  
16 much more objective process if we establish a 70 percent  
17 leverage initially, and people can bid cash up from that  
18 but not increase the debt amount. And I spent a lot of  
19 time thinking about that issue.

20 Q. Okay. But that 70 million is a hard cap. It doesn't  
21 flow as a percentage of the total bid, right?

22 A. That is correct.

23 Q. So if somebody came in and they said, "I want to offer  
24 40 million in cash and 80 million in debt," that would not  
25 qualify as a superior bid, right?



1 A. That's correct. That would impose yet a further  
2 negative cash flow on the asset. And, again, there's,  
3 there's no absolute automatic number, that I think anybody  
4 that's starting off at -- that 70 percent leverage ratio is  
5 a pretty high leverage ratio in this world; and, therefore,  
6 requiring cash above that is certainly reasonable and will  
7 add to the safety and stability of the reorganized debtor.

8 Q. Okay. But, again, you know, pick a leverage ratio that  
9 you think is safe. Let's say it's 50 percent, right?  
10 Somebody came in and offered 80 million in cash and  
11 80 million in debt. That would not count as a superior  
12 bid. It would be \$160 million, and it would not count as a  
13 superior bid on these procedures, right?

14 A. That is correct. But if they offered that as cash with  
15 a 70 million, it would.

16 Q. Did you ask for this provision or did CrossHarbor?

17 A. It was negotiated.

18 Q. And who asked for it in that negotiation?

19 A. I don't know who asked -- I mean this -- as I said  
20 before, this went through a lot of thought, a lot of  
21 iteration, a lot of back-and-forth. And the number had  
22 changed. At one point, I know the number was 60 million.  
23 At one point, it was -- could be increased pro rata, as you  
24 just described.

25 All those permutations were negotiated and ultimately

1 came to a resolution that I think -- that both -- that,  
2 "A", I could get them to agree to -- again, I have to get  
3 them to agree to put up the cash and to incur the liability  
4 on the note. I mean they didn't want to pay this much. I  
5 got the offer up to this level through using the leverage  
6 and yet not so overburden the property on a go-forward  
7 basis that it can't be a sustained, viable, reorganized  
8 debtor.

9 Q. Is there any written analysis that you can point us to  
10 that you've done or that you've seen that shows that  
11 \$70 million is a realistic cap on the amount of debt that  
12 should be on the post-reorganized debtors?

13 A. No, there's no magic to that.

14 Q. Okay.

15 A. Because this is a property that has negative cash flow,  
16 so even at 70 million it runs negative. You have to at  
17 some point make a judgment call and do what is practical  
18 and what can be accomplished and do it in a way that is  
19 reasonable for all concerned. I believe that is -- is it  
20 demonstratively better or worse than 60 or 80? Only  
21 marginally. I mean there's no magic to 70, but less than  
22 70 -- I'm sorry, more than 70, you're up above 70 percent  
23 leverage, which I think everybody is going to agree is not  
24 a good place to go; and anything more than as the bid goes  
25 up just further taxes the negative cash flow on the

1 project. So at some point, you've got to draw and line,  
2 and I was able to draw that line at 70 and to get them to  
3 go along with that.

4 Again, they wanted no debt and lower cash because  
5 that's their preference. I think this is a higher-valued  
6 deal than their all-cash deal. But at some point, you've  
7 got to draw the line and say, "No more debt on this  
8 property." That's what got us in this mess to begin with.

9 Q. Is it possible that a buyer for this property or  
10 someone interested in infusing capital could have a  
11 different business plan in mind for the club than the one  
12 under which it's operated so far?

13 A. Certainly. I mean I would expect any buyer to have  
14 tweaks. And there may be a buyer with a radically  
15 different business plan. I think to get a deal done in the  
16 next two and a half months and an approved plan of  
17 disclosure statement, I don't think you can have a  
18 radically different -- I mean I don't think anybody could  
19 survive their due diligence on a radically different  
20 concept. You would, of course, never get concurrence on --  
21 I assume you're talking about on a radically different  
22 concept; for example, a public ski area. And I haven't  
23 heard anybody that's suggested the value is maximized for  
24 the secured or unsecured creditors by doing something  
25 radically different.

1 Q. Well, but put aside radical. Is it possible that  
2 somebody could look at these assets and say, "Well, geeze,  
3 if you tweaked the membership dues a little bit - which the  
4 debtors have the right to do - to eliminate the subsidy to  
5 the current members and thereby stop the negative cash  
6 flow, maybe I could put a lot more debt on this"? Isn't  
7 that possible?

8 A. Well, as presently contemplated, there is going to  
9 be -- as I said, you're not limiting this. You will be  
10 presently surprised, I hope, that the day after this is  
11 confirmed, as I conceive the plan right now, there's no  
12 limitations on somebody changing the dues. As a matter of  
13 fact, our projections assume the dues has to increase.

14 Q. Okay.

15 A. I mean I don't think anybody is so unrealistic to  
16 believe that a developer can, in perpetuity, pay for  
17 services beyond what they're being compensated for, so the  
18 anticipation is everybody will. Whether a buyer wants to  
19 raise the dues to 20,000 or 24,000 or raise it over 4 years  
20 or raise it over 10 years, that's the reorganized debtor's  
21 business to deal with. We have a set of projections and  
22 we're going to attach those projections, but those are not  
23 binding on the business plan of the new equity investor.

24 Q. But the limitation you are asking the Court to impose  
25 is that any of those -- any potential buyer can't propose

1 more than \$70 million in debt, right?

2 A. Correct, that --

3 Q. Isn't that going --

4 A. I'm sorry.

5 Q. -- to deter bids? Because somebody who has a different  
6 business plan and therefore thinks they can put more debt  
7 on isn't going to be able to make that bid.

8 A. I guarantee you I could get somebody out there to bid  
9 200 million if they don't have to put \$1 down; yes, you  
10 will. Everybody in this room would pay \$1 and take on  
11 200 million worth of debt.

12 Q. Okay.

13 A. That's not the point. The point is: Are you deterring  
14 the type of entities that have to put up \$200 million worth  
15 of cash by -- and, again, this is debtor financing. If  
16 they have access to third-party financing, by all means,  
17 get it; if they want to do all cash, by all means, do cash.

18 But you're absolutely right. I made a determination  
19 that in order to spur bidding for the majority of people,  
20 that we would -- and to, again, give them comfort. I've  
21 got to get realistic people in here who aren't going to  
22 want to over-leverage this. And their fear is that if I  
23 allow a yahoo to come in and put a dollar down with  
24 everything else being debt, you're not going to get the  
25 serious people looking at this.

1           You need -- and mean that was -- the market's loud and  
2 clear. In this market, you need a set of parameters so the  
3 serious people will pay attention to this. And anybody who  
4 wants to put more than 70 percent of debt on, I question  
5 whether, "A", they're serious; and, "B", they've got the  
6 further capital to go ahead and do the development.

7 Q. I'll ask you one more question, then I'll move on to  
8 the next one. I mean we're really not talking about the  
9 guy who wants to have more than 70 percent, right?

10           Somebody comes in and says, "I'm willing to pay 50  
11 million in cash, and I want to have 75 million in debt," a  
12 more conservative leverage ratio than what is contemplated  
13 by the CrossHarbor proposal. That bid is excluded, right?

14 A. That wouldn't be a qualifying bid.

15 Q. Okay. Let's go to Paragraph C. Paragraph C requires a  
16 qualified bidder or a bidder in order to be qualified to  
17 propose in writing what additional collateral will be  
18 provided to replace the additional property being  
19 contributed by CrossHarbor and/or its affiliates, right?

20 A. Correct.

21 Q. Okay. What is the additional property that's being  
22 contributed by CrossHarbor?

23 A. Okay. And that will be fully spelled out. The  
24 anticipation is that the CrossHarbor will contribute back -  
25 and, again, this will be in writing and detailed out - will

1 contribute back the golf course lots that it purchased, and  
2 that those will go back in, and that those will serve --  
3 both the proceeds from the development of that will go to  
4 the reorganized debtor as well as the lien that's being  
5 created here will also encumber those, so that the lien  
6 will have more value than -- certainly far more value than  
7 the existing CS lien because it will have both the  
8 clubhouse as well as -- I'm sorry, the lodge as well as  
9 these new lots.

10 Q. Okay. And just to make it perfectly clear, right, we  
11 don't know what that collateral is because it's in the plan  
12 and we won't see that until Friday, right?

13 A. Well, you might be able to see it earlier. I wouldn't  
14 count on it, but that's correct.

15 Q. Okay.

16 A. But I'm telling you what is.

17 Q. Okay.

18 A. It's --

19 Q. Do we know how much it's worth?

20 A. As I sit here today, no.

21 Q. Any idea? I mean because if the Court approves these  
22 bidding procedures, right, then anybody else who wants to  
23 put in a bid is going to have to match what that value is,  
24 right?

25 A. They're going to have to match that value in some form

1 of collateral or cash.

2 Q. Right. And you can't tell us how much that is, that  
3 mystery requirement that any bidder is going to have has to  
4 comply with in order to be qualified. You can't tell us  
5 what that amount is, right?

6 A. Correct.

7 Q. Okay.

8 A. I would anticipate that we will establish some form of  
9 benchmark so that it is not an uncertainty, something that  
10 a -- for example, an LC or something else of a defined  
11 amount will certainly qualify. But, again, in an effort  
12 not to chill, it would be easy to say, "You've got to put  
13 up an LC or cash."

14 We've left it flexible since other potential bidders  
15 may want to use other noncash collateral, leaving that  
16 open. Again, I recognize, again, all this is a trade-off.  
17 We recognize that that engenders a certain amount of  
18 uncertainty, but at some point you've got to draw the line  
19 in order to try to encourage people in that respect so  
20 we're not binding them. An easy thing to say would have  
21 been a letter of credit, and then you would have have upset  
22 at cash or a letter of credit. So we try to leave it open  
23 enough that another real-estate entity could potentially  
24 use real-estate collateral to make that up, which is, in  
25 fact, what's happening here.



1 Q. Okay. This Paragraph C is something that CrossHarbor  
2 asked for, right? You didn't propose that, right?

3 A. No, I actually, I actually, I actually did propose it  
4 in this fashion. And then, again, back to the issue of --  
5 I sat down, and one of the things I sat down and tried to  
6 do is walk through the mechanics. And we are going to have  
7 to -- and you've been through many of these before or at  
8 least your bankruptcy partners have been through this  
9 before. You're going to try to analyze, and we'll sit here  
10 with -- I know CS's financial visor will be involved, as  
11 well. You're going to get bids, and you're going to try to  
12 compare and try to figure out what the value of the bid is.

13 And we wanted to provide here that we had a mechanism  
14 for calling out and identifying that the -- that we're  
15 going to try to evaluate collateral versus collateral. I  
16 mean the -- let me just give you an example: Let's assume  
17 somebody gave a bid and didn't put up additional  
18 collateral. If we didn't have that provision in here, I  
19 then have to value a note, say a \$70 million note that  
20 secured by Yellowstone Club plus these 11 lots versus  
21 somebody who's offering the same note not secured by those  
22 11 lots because they don't have those 11 lots to give.

23 And at that point, we're going to be in a terrible  
24 fight trying to say, "How much is the note worth more  
25 because it has a little more collateral?"

1           And so I did not want to be in that process. I wanted  
2 more definitiveness to this. So what I said was, "Is  
3 anybody else who wanted to put up a note" -- and they don't  
4 have to put up a note; somebody can pay cash. But if they  
5 want the note, they do have to put up a like amount of  
6 collateral as the stalking-horse bid. But I left it open  
7 so that they could be flexible in what they put up as  
8 collateral. I didn't restrict that at all.

9       Q. Well, you've also -- I mean that potential complexity  
10 is still here, right, because somebody would be entitled to  
11 propose an increased interest rate on the note in lieu of  
12 collateral, right?

13       A. That's correct.

14       Q. Okay. So you're still going to have to try to figure  
15 out what's a \$60 million face note at 8 percent worth  
16 versus -- you're still going to have to do that, right?

17       A. I believe -- I mean my concept, and I -- first of all,  
18 it's a lot easier to compare -- when you apply present  
19 value structure to that, it's a lot easier to compare the  
20 value of that than compare a note that has a little  
21 different collateral pool.

22           But more importantly, no, we -- that's one of the  
23 reasons why we are not allowing the note to be varied, just  
24 for the reason you just described. The note is the note  
25 with the terms on the note, and that's why what we limited

1 the initial bids to was cash so we actually avoid exactly  
2 that thing you just said.

3 We don't want to be here -- first of all, we want the  
4 bidders to show up because they believe in certainty; and,  
5 secondly, we don't want to be here arguing with you as to  
6 whether a particular note has more or less value by \$100  
7 than another particular note. The note will be set, and  
8 people can then bid above that in cash. And I'm confident  
9 that we'll all agree the difference in the value of cash.

10 Q. Okay. And just so we're clear, I mean the only way  
11 that this contribution of collateral to the reorganized  
12 debtors could possibly benefit any of the creditors in this  
13 case, right, is by securing that \$70 million note, right,  
14 making it more secure? Is that right?

15 A. That is correct.

16 Q. All right. There's no suggestion that that collateral  
17 goes directly to -- gets spit out to the creditors in this  
18 case, right?

19 A. No, specifically, it does not.

20 Q. Right.

21 A. But it's not insignificant. I mean you've got a  
22 problem with the collateral behind your note now. What I'm  
23 trying to do is remedy that so that that imperfection and  
24 that problem doesn't continue in the future.

25 Q. Well, I mean there's a problem right now which is that

1 there's a disequilibrium between the claim and the value of  
2 the collateral, maybe, right? And you're going to remedy  
3 that in both directions, right? I mean you're going to  
4 reduce the value of the claim down to 70 million, right?

5 A. No, I'm not --

6 Q. Okay, all right.

7 A. -- reducing the value of the claim down to 70 million.  
8 More important -- I mean there's no suggestion of that.  
9 But more importantly, I don't know if there's an issue  
10 between value of collateral; what there clearly is an issue  
11 with your collateral is you don't have the base lodge, you  
12 don't have any flat land encumbered with your lien. You  
13 have a very, you have a very difficult -- your collateral  
14 loan is very difficult development situation.

15 Q. Let me just try to clear up one tangential issue. You  
16 were talking on your direct about the \$88 million in -- is  
17 it member deposits that are potential rejection damages, is  
18 that correct, that somebody would need to assume -- or it's  
19 not "rejection damages"; it's the -- they would need -- a  
20 buyer would need to assume the obligation to pay that back;  
21 is that right?

22 A. That is correct.

23 Q. Okay. I apologize, it took me awhile to get there.

24 But that \$88 million doesn't need to be paid back for  
25 30 years and then without interest, right?

1 A. Well, I'm not sure. I mean that's -- if the club  
2 continues to perform, that's correct. But if the club is  
3 in default on performing its obligations - for example, not  
4 rendering services, not rendering services at the  
5 represented level - if we lose our funding on May 1st, I  
6 think that deposit -- the club is then in breach and then  
7 owes that liability back.

8 Q. Okay. But a potential bidder coming in here is not  
9 expecting to propose a business plan that's going to end up  
10 back in Chapter 11, right?

11 They're going to propose to operate these assets in  
12 some way, presumably keep the members around, right?

13 When they look at that \$88 million obligation, it's not  
14 \$88 million; it's, "I may in 30 years have to pay back  
15 \$88 million," right?

16 A. And that's precisely the logic I used to negotiate with  
17 the brokers.

18 Q. Okay. And \$88 million - (inaudible) - discounted back  
19 to present value is a tiny fraction of \$88 million, right?

20 A. That's my argument to both the buyers and the brokers,  
21 exactly.

22 Q. Okay, great. Let's look to Paragraph D.

23 A. But that -- but you asked me about the claim. In the  
24 event of breach, if we go to -- if the DIP is pulled or we  
25 go to liquidation, you then have the \$88 million due then.

1 So you've got to be clear whether you're talking about how  
2 it affects the value or what claim amount, legitimate claim  
3 amount would be asserted.

4 Q. Well, I guess I thought that you were suggesting that  
5 it was an impediment to a bidder and suggested a bidder was  
6 really going to have to come to the table with an awful lot  
7 of resources because, in addition to having to top the 100  
8 million, in addition to having to top the collateral, and  
9 in addition to having to provide working capital, they were  
10 going to have to be prepared to repay \$88 million; isn't  
11 that right?

12 A. I'm sorry if my testimony was misunderstood. No, what  
13 I was saying is a bidder needs to know whether the  
14 memberships are going to be assumed or rejected not because  
15 of the financial issue of rejection but because of the  
16 effect upon the value of the club, the ongoing capacity -  
17 (inaudible) - the lack of litigation and everything else  
18 that would be incurred with a rejection of those  
19 agreements. And so a bidder, I believe, needs certainty in  
20 knowing whether those agreements are going to be rejected  
21 or assumed.

22 Q. Okay. Let's look at Paragraph D. In Paragraph D  
23 (quoted as read): "Any bidder -- any rival bidder in order  
24 to be qualified is going to have to commit to working  
25 capital no less than that to be provided by Purchaser,"

1 right?

2 A. Correct.

3 Q. And "Purchaser" is CrossHarbor, at least --

4 A. It's -- well, it's --

5 Q. -- contemplated to be CrossHarbor?

6 A. I'm sorry, I interrupted you.

7 Q. "Purchaser" is at least contemplated to be CrossHarbor?

8 A. Yeah, "Purchaser" is a defined term in here as  
9 CrossHarbor.

10 Q. Okay. And the working capital that is contemplated to  
11 be committed by CrossHarbor is 75 million; is that right?

12 A. Above and beyond the initial purchase price, correct.

13 Q. Right. And the 77 -- 75 million, again, is not going  
14 to be a payout to the creditors in this case. That's just  
15 a promise to put \$75 million in working capital or commit  
16 \$75 million in working capital to the reorganized debtors,  
17 right?

18 A. It's more than a promise. It's 25 million in cash  
19 initially plus another \$50 million firmly committed over  
20 time.

21 Q. Okay. But none of that 75 million gets paid out to the  
22 creditors in this case, right?

23 A. Not directly.

24 Q. Okay.

25 A. It's necessary for the debtor to continue to operate

1 and be able to repay the note.

2 Q. Okay. So maybe it provides comfort for the note, but  
3 the \$75 million is not directly paid out to any creditors,  
4 right?

5 A. That's correct.

6 Q. Okay. And did you propose this requirement, or did  
7 CrossHarbor?

8 A. Well, as I said, it's been clear in every discussion  
9 that I've had with anybody, including CrossHarbor, is the  
10 absolute requirement that very meaningful additional cash  
11 be contributed to a reorganized debtor. I mean once we've  
12 been continuing to run projections and spreadsheets and  
13 hone the budget, they're -- I don't believe this can be  
14 done for less than \$75 million of additional capital. And  
15 consequently, CrossHarbor was willing to put the money in.  
16 CrossHarbor wants to put the money in knowing that you can  
17 only be successful -- the only reason they put money  
18 upfront and undertake this is if they are going to put  
19 additional money in. And I can't propose a plan or endorse  
20 anybody else stepping in to reorganize this debtor that  
21 isn't also making a commitment to contribute what is the  
22 bare-minimum capital necessary to go ahead and prosecute  
23 this and make payroll.

24 Q. Is there an analysis or a spreadsheet or model, or  
25 something, that you've prepared that supports that



1 \$75 million bare-minimum number?

2 A. Well, several - (inaudible) - yes. I mean we -- and we  
3 will file projections with the disclosure statement. But  
4 one of the other things -- I didn't talk about it today,  
5 but one of the other things we put up in the data room for  
6 everybody to get and for your clients, who reviewed it  
7 extensively, is we did put a model up which shows the cash  
8 negative. We talked about this at great length at our  
9 hearing here six - eight weeks ago. And CrossHarbor has a  
10 different model. They've shared their model with your  
11 client.

12 There isn't any model I've seen by anybody -- your  
13 appraisal, your appraisal, your appraisal, I think, shows  
14 \$200 million of capital needed. I mean we're talking about  
15 a very capital-intensive project. There's nobody  
16 suggesting you can do this -- there's nobody suggesting you  
17 can get through May without new capital.

18 Q. Would you agree with me that the amount of working  
19 capital necessary for the reorganized debtors would depend  
20 on their business plan?

21 A. Yes.

22 Q. Okay. And couldn't somebody have a business plan that  
23 varied from the existing one; and, therefore, called for  
24 less working capital?

25 A. I think the existing business plan requires more

1 capital than this. And, again, that's one of those  
2 compromises that anybody who's going to be a serious  
3 proponent of reorganizing is going to have to put capital  
4 in. I think I could have very reasonably said 100 million,  
5 125 million, even 150 million, and I think some of the  
6 projections show that as needed.

7 Again, the effort is not to be 99 percent sure; the  
8 objective is, is to be sure enough that we can go forward  
9 and not dissuade anybody who would be an honest-to-goodness  
10 prospective investor and proponent. We would all be safer  
11 with that number being higher, but I think it's going to  
12 reduce the number of people that have an interest. If you  
13 get down below 75 million, it is very, very difficult for  
14 me to see how any plan like that could maximize value; and,  
15 frankly, just be able -- for me to be able to present a  
16 feasible plan of just carrying the operating loss and the  
17 minimum physical improvements that need to be done on the  
18 property over the next several years.

19 Q. Okay.

20 A. We're running about a 25-million-a-year deficit now  
21 without doing any capex.

22 Q. Right. And this working capital requirement is really  
23 driven by the deficit, right?

24 A. It's both the deficit as well as improvements to  
25 prosecute the completion of the club.

1 Q. Okay. But if a buyer came in and said, "You know, I'm  
2 going to change the business model, increase the membership  
3 dues to reduce the operating loses, I'm going to tweak the  
4 expenses and the income, I'm going to start charging for X  
5 Y and Z, and I'm going to, you know, reduce the number of  
6 lifts operating. And I recognize that that may have a  
7 long-term impact on selling lots, but I think it's  
8 worthwhile for me to stop the bleeding. Therefore, I only  
9 need 50 million in working capital, and I'm willing to  
10 offer 25 -- that \$25 million savings, I'm willing to offer  
11 to the creditors in this case."

12 You can't do it under these procedures. That bid is  
13 excluded. It's not qualified, right?

14 A. Well, I think there's two things. You said "stop the  
15 bleeding". You can run whatever numbers you want; you  
16 cannot stop the bleeding. You could change certain things  
17 and reduce the bleeding, but between that, even at a  
18 reduced level with the necessary capex, I don't see a  
19 viable business plan that could be put forward for less  
20 than a \$75 million commitment. As I said, I know  
21 CrossHarbor has budgeted considerably more than 75. I  
22 don't see that 75 -- I don't see you can get meaningfully  
23 below 75.

24 And the other thing is: I think people are going to  
25 bid the value. And 75 going into the debtor isn't going to

1 reduce the purchase price they pay because if that 75 -- if  
2 they really believe only 50 is needed, they put 75 in and  
3 then they can pull 25 out if it's not needed. This is a  
4 commitment to provide the working capital, if needed,  
5 irrevocably. And if it's not needed, there's no commitment  
6 to put it in. I don't see how that chills the price that  
7 would be paid for the, for the debtor.

8 MR. SAUNDERS: Just a minute, Your Honor.

9 Q. (By Mr. Saunders) What was the date of your visit to  
10 the Yellowstone Club?

11 A. I actually just got there last Sunday.

12 Q. Okay. So as of the time you talked to the four  
13 prospects, you called about their potential interest, you  
14 had never been there; is that right?

15 A. That's correct.

16 Q. Okay.

17 A. I had assembled the data room, went through every topo,  
18 had a person there, but I -- as I told you before, I  
19 couldn't even call those prospects being there. I mean  
20 that is not a place you can do business.

21 MR. SAUNDERS: No further questions.

22 THE COURT: Does anyone have any questions? I  
23 guess a couple.

24 You may proceed.

25 MR. WHITMORE: Clark Whitmore for the Class B ad

1     hoc group.

2                                   CROSS-EXAMINATION

3     BY MR. WHITMORE:

4     Q.   Mr. Greenspan, it would be prudent, wouldn't it, if  
5     possible, to know what the plan says before we went ahead  
6     and locked into approval, court approval of bidding  
7     procedures based on sale of an equity interest that's  
8     generated by that plan?  Isn't that right?

9     A.   You know, I've read that in the papers, and I don't --  
10    no, I don't believe so at all.  These procedures -- you  
11    know, we will debate the disclosure statement and the plan,  
12    I'm sure, ad nauseam, but these procedures aren't  
13    contingent upon -- I wouldn't change these procedures based  
14    on modifications to the plan.

15         These are procedures designed to foster an open,  
16    transparent, competitive process, and I would want these  
17    procedures in place irrespective of what the plan says.  
18    And that's why I feel comfortable getting this on as  
19    quickly as possible so that it could come together with the  
20    plan.  We tried to lay out the outlines of the plan --

21    Q.   Sure.

22    A.   -- as we knew it then so this wouldn't be done in a  
23    total vacuum, but I don't see that you -- changes to the  
24    disclosure statement or the plan would affect these  
25    procedures.

1 Q. So I think you testified earlier that there could be  
2 material changes to the plan between now how you conceive  
3 of it and what it turns out to be on Friday; isn't that  
4 right?

5 A. Well, and then beyond that, I mean I -- in the  
6 perfect --

7 Q. If you could just answer.

8 A. I'm sorry, yes.

9 Q. Okay. And it's certainly, it's certainly possible that  
10 the contracts with CrossHarbor and Edra Blixseth haven't  
11 been finalized, right? You testified that that's the case,  
12 right?

13 A. I mean to the best of my knowledge, there's not going  
14 to be contracts with CrossHarbor and Edra Blixseth.  
15 Everything would be done with the reorganized debtor, would  
16 be disclosed in the disclosure statement, and laid out for  
17 everybody to review. The best I know, there's not going to  
18 be a contract between Edra and CrossHarbor. Everything is  
19 going to - (inaudible) - to the benefit of the debtor.

20 Q. Okay, so this is helpful to -- so there's not going to  
21 be a contract on Friday signed by CrossHarbor that will  
22 bind it do anything; is that right?

23 A. I'm sorry, I may have misunderstood you. I thought you  
24 were saying a contract where the two parties were  
25 Ms. Blixseth and CrossHarbor and, I'm sorry, that's what I

1 responded to.

2 I would anticipate that there is an agreement between  
3 CrossHarbor and the debtor, subject to confirmation of a  
4 plan, and a contract between Ms. Blixseth and the debtor  
5 that would be effective upon confirmation of a plan.

6 Q. And you would agree that the contents of those  
7 agreements could affect what somebody would be willing to  
8 pay for the equity interest in these debtors, right?

9 A. No, because that -- they, they are not -- they would  
10 not be binding themselves. Ms. Blixseth and CrossHarbor  
11 wouldn't be binding themselves to convey property to the  
12 debtor if they aren't going to be the successful bidder.  
13 The CrossHarbor contribution, giving land, giving 11 lots  
14 that they paid, what, \$20 million or \$30 million or  
15 \$35 million for, they're not going to give those lots to  
16 the reorganized debtor for gratis if they're not the  
17 prevailing bidder. And nobody, nobody in the world has the  
18 right to buy those from the reorganized debtor. The debtor  
19 doesn't own those.

20 Q. And that's true for Edra Blixseth's property, as well,  
21 that unless CrossHarbor's the successful bidder, that will  
22 not become part of the package, or is that different?

23 A. No, that I would not expect Ms. Blixseth to contribute  
24 that without something in it for her. I mean that's --

25 Q. Okay. Now, I'm just finding this out for the first

1 time. And that's something that would be clear in the  
2 plan, though, right?

3 A. It should be, yeah.

4 Q. Okay.

5 A. I mean if it's not, you will clearly challenge the  
6 disclosure statement. But that is additional assets coming  
7 into the estate to benefit the estate.

8 Q. All right. So you're asking the Court today to approve  
9 the bidding procedures, and it's really going to be a bid  
10 between CrossHarbor having the right to buy a  
11 fully integrated club with a clubhouse as opposed to third  
12 parties only bidding on the assets without the benefit of  
13 that; is that right?

14 A. (Inaudible) -- there's two different sets of assets --  
15 well, two different set of assets; one with a subset.  
16 There's a set of assets the debtor owns.

17 Q. Yeah.

18 A. Okay. The debtor owns the clubhouse, and the debtor  
19 owns the mountain, and the debtor owns a lot of vertical  
20 space, a lot of vertical area. All of that is proposed to  
21 be bid upon. That is being bundled. And some of that is  
22 Credit Suisse's collateral and some is not. So all of that  
23 will stay in the reorganized debtor, and a prospective  
24 investor/buyer will bid on all of that.

25 Q. And that includes --



1 A. Let me -- I'm sorry.

2 Q. -- some of the property that Edra Blixseth owns?

3 A. No. Okay.

4 Q. Okay. Tell me about the property she owns, please.

5 A. CrossHarbor and Ms. Blixseth are proposing to  
6 additionally contribute property that they own to the  
7 reorganized debtor. And in consideration -- and that  
8 reorganized debtor, with that, CrossHarbor will pay right  
9 now \$100 million as laid out here. Okay?

10 A competing bidder will bid, but a competing bidder  
11 isn't getting the assets that CrossHarbor is putting in and  
12 isn't getting the assets that Ms. Blixseth is putting in  
13 unless they negotiate for that --

14 Q. Okay.

15 A. -- I mean if they want to negotiate for that. But  
16 those aren't assets the debtor owns today.

17 Q. And you testified earlier that the assets that Edra  
18 Blixseth owns are important to the value of the project; is  
19 that right?

20 A. I think it substantially enhances it.

21 Q. And you made the point that Credit Suisse's not having  
22 a lien on that was a -- made their secured position very  
23 problematic; isn't that right?

24 A. I think a whole combination of things does. But the  
25 debtor -- at the time they made the loan, the debtor didn't

1 own those.

2 Q. If we waited until after the plan were proposed and we  
3 had CB Richard Ellis here to testify before the Court, they  
4 could have an opportunity to explain to the Court whether  
5 or not the bidding procedures might discourage third-party  
6 bidders; isn't that right?

7 A. Sure, you could ask them. I mean I've discussed with  
8 them concepts, taken advice back from them. They obviously  
9 are going to put a ton of work into this. And they get  
10 paid a bunch more if they bring in an outside bidder. They  
11 get paid almost twice as much as if CS credit bids.

12 Q. Right.

13 A. They get paid 20 percent more than if CrossHarbor is  
14 the prevailing bidder. I don't think they'd be spending  
15 that type of time -- I've got a national team from them  
16 that are going to work on this from across the country. I  
17 don't think they'd be spending the time if they thought  
18 these bidding procedures were a fool's errand.

19 Q. But nevertheless, we don't have the benefit of hearing  
20 their testimony, right, because of the timing of all of  
21 this?

22 A. Correct.

23 Q. What is Edra Blixseth to receive in the plan of  
24 reorganization that's going to be filed? I mean has it  
25 been settled?

1 A. No, it hasn't.

2 Q. Can you describe the bid and the - (inaudible) - or --

3 A. I mean what is being discussed is some form of deep,  
4 residual, back-end interest, but that, you know, it's  
5 still -- this is still a work in process. And that's why  
6 the -- it's the other reason why what we're trying to do is  
7 get the pieces in place. And that will not be a  
8 complicating factor for a prospective bidder unless the  
9 prospective bidder wants to also buy that.

10 Q. And is there a discussion of a release of claims in  
11 connection with her donation of this property?

12 A. My personal -- I don't think the Court's going to  
13 approve a release of claims to third parties. But I mean,  
14 as I said, I want to have a confirmable plan up. I don't  
15 to be asking --

16 Q. Is that being discussed?

17 A. What?

18 Q. Is that being discussed?

19 A. There's always an ask, of course, but I think we're all  
20 pushing -- at least I certainly am pushing for a plan that  
21 is going to be confirmable.

22 Q. I noticed in the plan bidding procedures that there are  
23 a number of places where the debtors have discretion to do  
24 various things; isn't that right?

25 Well, let me give you an example: For example, the

1 debtor gets to decide whether or not a bid is a qualifying  
2 bid; isn't that right?

3 A. Correct.

4 Q. And the debtor gets to decide, if there are two  
5 qualifying bids in an auction, which is the better or best  
6 bid; isn't that right?

7 A. Typically, yes.

8 Q. Okay. And in connection with that process, it's  
9 certainly possible that the debtors' judgment may be  
10 affected by debtor-in-possession financing arrangements it  
11 has with CrossHarbor; isn't that right?

12 A. Again, I do not believe that anything this debtor has  
13 done is affected by that. And I mean, you know, as you  
14 said, anything's possible, but this is going to be done  
15 with every party here present, every party's input, with  
16 the transcription. We've provided in the listing agreement  
17 that every party here gets the same weekly reports I get.  
18 They will have full access to the broker, they have access  
19 to the community, and they'll have access to the  
20 transaction process.

21 Will we potentially have a legitimate difference of  
22 opinion? Of course. And I can guarantee you, if we  
23 actually have one that we can't work out, we're going to be  
24 back in front of this Court again to resolve it.

25 Q. Now, I imagine there are some issues where you're sort

1 of the professional kind of representing the deal, almost.  
2 Is that how you feel in connection with these negotiations?

3 A. This is, this is a tough position. No, I don't  
4 represent the deal; I represent a boatload of workers who  
5 didn't get paid, a boatload of trade, a boatload of  
6 members, a secured lender who's owed a huge amount of  
7 money. There's, there's equity at the residual; there's  
8 "B" equity, which is your clients. There's just a  
9 massive -- the employees that are working there, the reorg  
10 debtor. I mean this is, this is a balancing act.

11 Q. Now, while I appreciate you're doing the best that you  
12 possibly can - I have the highest regard for what you've  
13 done and for your organization - for that matter, at the  
14 end of the day, you may need to do what your client tells  
15 you to do, though, right?

16 A. If my client tells me to do something that I'm not  
17 comfortable with or, quite frankly, if I'm at the point  
18 where I think I'm not being effective or productive, I  
19 resign. I mean I have plenty of -- as was just pointed  
20 out, I have got more things to do than this, and I would be  
21 very happy to go back and do them. So the answer is "no",  
22 I am not compromising myself one iota whether she says it  
23 or Credit Suisse says it or Tom Beckett says it.

24 Q. If we could get one week, if CrossHarbor would extend  
25 the back-end deadline by a week and we could have this

1 hearing a week after the plan were filed and all of the  
2 other time frames remain essentially the same, that would  
3 mean a much better position for us to be in as constituents  
4 wanting to make sure that we're comfortable with the  
5 appropriateness of the bidding process and for the Court,  
6 wouldn't it?

7 A. You know, I've got cynical doing this one. I'm not  
8 sure anyone would be comfortable. I mean I'm not sure I  
9 would ever get an agreement. But I am still back to --  
10 and I've scratched my head hard and long. I don't see what  
11 the details of the plan - I mean we've got the parameters -  
12 but what the exact details of the plan have to do with the  
13 bidding procedures. You know, you may think the disclosure  
14 statement and the plan are terrible, but I don't see how  
15 that's going to change the bidding procedures.

16 What would you change in these bidding procedures? Are  
17 you going change the entity that goes out? Are you going  
18 to change the overbid amount? Are you -- I don't see  
19 anything that's going to change here based on what we've  
20 put in a disclosure statement and plan. We tried to give  
21 you the outline of it so that it wouldn't be a total  
22 vacuum, but filling out those details I don't think  
23 advances it. And as I said before I would always like to  
24 have more time.

25 Q. We all miss things, though.

1 A. If you can get them to give you more time and if you  
2 can fund the estate for another week, I'm willing to do  
3 whatever. That's not the reality.

4 Q. Okay. But we all miss things, right? We all make  
5 mistakes, right?

6 A. Plenty.

7 Q. And I think today we were looking at a basic provision  
8 of the DIP order and potentially people are reading it a  
9 different way. So that's certainly possible, isn't it?

10 A. Yes.

11 Q. And it's true that CrossHarbor's goal in its  
12 negotiations with you presumptively will be to try to get  
13 this property for as cheap as possible and not to encourage  
14 competing bids, right?

15 A. They are not doing this out of charity, I agree. I  
16 mean they're a buyer.

17 Q. Okay. I mean that's their presumptive objective. And  
18 if the fact that the plan, the plan that they have control  
19 over and influence over hasn't been filed yet, it's  
20 certainly possible that the fact that the plan hasn't been  
21 filed yet, that we might end up making a mistake here and  
22 approving a bidding process that is problematic. It's at  
23 least a possibility, isn't it?

24 A. I don't -- see, I don't think that's the case with the  
25 proceeding procedure. As I said, I don't see what we'd

1 change in the bidding procedures. And they're pretty  
2 simple, and they're out there. I guarantee you, w are  
3 going to file cleanups on the disclosure statement and  
4 plan. I mean there will be errors in that. I've never  
5 seen a case where you don't have cleanups, but especially  
6 in this. And as we go on, there's going to be  
7 modifications.

8 But, once again, I bifurcate the bidding procedures  
9 where we've all had a chance to look lat them and where  
10 they're relatively straightforward from the disclosure  
11 statement and the plan. You and we and all the other  
12 parties are going to spend a month beating up the  
13 disclosure statement and the plan, I know that. What I'd  
14 like to be doing is marketing during that time with bidding  
15 procedures that are applicable almost irrespective of what  
16 that plan and disclosure statement are. And I think that's  
17 what we have here.

18 Q. But nobody can market until the plan's filed anyway,  
19 right?

20 A. That's Friday.

21 Q. Okay.

22 A. That's, what, three days.

23 MR. WHITMORE: Okay, thank you. Nothing further.

24 THE COURT: Thank you. Mr. Warner.

25 MR. WARNER: Thank you, Your Honor.



1 CROSS-EXAMINATION

2 BY MR. WARNER:

3 Q. I want to go back to the motion and the actual outline  
4 of bidding procedures, because as I read this, this is just  
5 an outline; these aren't the procedures.

6 There's additional property being contributed by  
7 CrossHarbor, correct?

8 A. The disclosure statement and plan will provide for  
9 additional property.

10 Q. And that will be additional collateral for the note,  
11 and the note can't exceed 70 million?

12 A. That's correct.

13 Q. Is that additional property being provided -- becomes  
14 an asset of NewCo?

15 A. Yes, it will be, it will be an asset of the reorganized  
16 debtor.

17 Q. Okay. And it's -- and if I were to have to match that  
18 bid, I have to provide property of the same value or  
19 greater than that additional property, correct?

20 A. Deliberately left it flexible, but either -- you know,  
21 when you say "property", yes, property, but the property  
22 can be realty, could be an LC, could be cash. But, yes,  
23 something so that you have an apples-to-apples note.

24 Q. Okay. So let's start with the first apple: The  
25 property being contributed by CrossHarbor. If I were go to

1 compete, how do I know in making my bid what the debtor  
2 says is the value of that property?

3 A. I would expect us to be able to put forth what I'll  
4 describe as a cash equivalence so somebody will have  
5 certainty that if they put an LC or cash, that that, in  
6 fact, would give them assurance that it's of equal value.  
7 If they want the additional flexibility of posting other  
8 types of collateral, we then have to have a valuation of  
9 it.

10 Q. Okay. I'm a buyer.

11 A. Yes.

12 Q. I show up on Monday of next week because your plan got  
13 filed on Friday.

14 A. Hm-hmm.

15 Q. How do I know the value of the additional property  
16 being contributed on Monday when I sit around in my data  
17 room and I figure out I'm going to make a bid? I have to  
18 ask you, the debtor?

19 A. Well, I anticipate we would actually publish what I'll  
20 describe as a safe-harbor number, a number that they know  
21 that if they put that up in cash or LC equivalent, they can  
22 be assured - I don't want to exclude anybody - so they can  
23 be assured that they've got an equal value of collateral.

24 Q. And when are you going to put that out?

25 A. I would hope to get that out by Friday, as well.

1 Q. Okay. And what is that number right now, in your mind?

2 A. I don't know what that number is, exactly.

3 Q. And that number is additional property contributed as  
4 collateral for the note, correct?

5 A. That is correct.

6 Q. Okay. If I, as a buyer, propose a lower note, do I  
7 still have to contribute property equal to that value or am  
8 I no longer a qualified bidder?

9 A. That's a good clarification. I think it would make  
10 sense that you would -- that if you put in -- well, your --  
11 if your additional cash -- I think your additional cash  
12 would reduce the amount of the note, and you could apply  
13 that first against the additional collateral. I think  
14 that's a good clarification.

15 Q. We heard today that the Court has entered an order  
16 authorizing the employment of CB Richard Ellis, correct?

17 A. Yes.

18 Q. Are they here today to testify?

19 A. I don't believe so.

20 Q. But you've retained them as your agent to market,  
21 correct?

22 A. Well, I've indicated a desire to retain them subject to  
23 Court approval.

24 Q. The Court's approved it.

25 A. Well, yeah, but I haven't signed a contract. We

1 weren't planning on having that hearing today. So I mean I  
2 just --

3 Q. Do you not intend to sign the contract?

4 A. I don't believe I've signed it.

5 Q. Okay. But you might sign it later today?

6 A. If I have an approved order, yes.

7 Q. Okay. We'll take the Court's word that the order has  
8 been entered, correct?

9 A. Correct.

10 Q. You intend to sign the employment agreement now? It's  
11 not a trick question.

12 A. No, no, no, no.

13 Q. I just want to make sure you're going forward.

14 A. No, but I'm -- in my mind, I had assumed that we were  
15 going to have bid procedures approved, we were then going  
16 to get a retention of them. You're now -- so what I'm now  
17 saying is, clearly, if we get bid procedures or plan  
18 solicitation procedures approved, I would clearly sign  
19 their order -- I mean their agreement today. If we do not  
20 have an approved plan solicitation, I then question whether  
21 I should sign their agreement. Because if I sign their  
22 agreement, I'm obligating the estate to at least the  
23 disappointment fee. I have to write them a check if we  
24 never get to a position where I can actually have them  
25 market. So I probably -- if I don't have plan solicitation

1 procedures approved, I think it would be imprudent for me  
2 to sign a contract with them obligating them -- for me to  
3 pay them money if we never get to this step.

4 Q. Fair enough. But if you sign it, you're doing it  
5 because you believe they are the best agent for this estate  
6 to market what you want to sell, correct?

7 A. Correct.

8 Q. Okay. But they're not here today to testify that the  
9 procedures you're proposing are the best. You're  
10 testifying; not the agent you're hiring to implement,  
11 correct?

12 A. That is correct.

13 Q. Okay. And so we don't know what they might say is the  
14 best?

15 A. Correct.

16 Q. Okay. You agree that more time is better than less  
17 time in trying to market something of this nature?

18 A. Within reason, yes.

19 Q. You also agree that as the time gets compressed, the  
20 bidders either disappear or the price at which they pay is  
21 less?

22 A. Potentially.

23 Q. You spoke to four people - yourself, our chief  
24 restructuring officer - four entities about an interest,  
25 correct?

1 A. No. The question was: Who above and beyond everybody  
2 who had expressed an interest did we actually affirmatively  
3 go out and outreach to.

4 Q. Correct.

5 A. No, I spoke to many more -- I mean we spoke to many  
6 more. All the ones that East West -- every person that  
7 Credit Suisse sent to me, every person that had contacted  
8 me on their own from any source was above and beyond that.  
9 His question was: How many people did I affirmatively go  
10 out and test above and beyond all those.

11 Q. Fair, fair, you're right. That was your testimony. In  
12 the four you talked to that you went out and called, you  
13 said they didn't have an aptitude -- apt -- I apologize.

14 UNIDENTIFIED SPEAKER: Appetite.

15 MR. WARNER: Appetite. It is late. And I'm an  
16 hour later than y'all.

17 Q. (By Mr. Warner) They didn't have an appetite at this  
18 time, right?

19 A. Under these -- under the circumstances I had then,  
20 correct.

21 Q. Okay. But now that we're here and about to consider  
22 approving procedures, which is 20 - 30 days later than  
23 those phone calls, do we know what their appetite is today?

24 A. I would expect -- those are the type of people that I  
25 would expect CBRE to be going back to. You know, so I

1 don't know firsthand what their appetite is. We've  
2 resolved a number of the objections and problems they had  
3 by doing this.

4 Q. And what about the time that they think would be  
5 reasonable for them to do what they have to do in  
6 diligence? Do you have that question answered?

7 A. I can't tell you with any certitude on any one of them.  
8 On an asset of this size - I've said it before and I think  
9 every knowledgeable person will tell you - the more time  
10 they could get, within reason, the more they'd like to  
11 have. I mean it, it --

12 Q. I want to put aside the parameters that you're working  
13 under vis-à-vis the DIP order, because as we heard today,  
14 maybe there's a way around it by terminating exclusivity.  
15 So let's just put that aside for the moment. Now, you may  
16 not agree with that interpretation, but put it aside for  
17 the moment.

18 I haven't heard one bit of testimony on what a buyer  
19 would want in order to consider purchasing these assets.  
20 What you've said, correct, is that the debtor is ready to  
21 go out and market; is that correct? The debtor is ready to  
22 go out and market.

23 A. The debtor is ready to go out and market, that is  
24 correct.

25 Q. The debtor has its data room ready.

1 A. Correct.

2 Q. The debtor has gathered the diligence that it believes  
3 is necessary for the data room.

4 A. Correct. And the debtor is going to afford every  
5 prospective buyer the absolute maximum period of time to do  
6 due diligence possible. We don't have the money to pay the  
7 lights or the workers on May 1st. The auction is going to  
8 be five days before then. They have the entire time up  
9 until the five days before then.

10 Q. We've heard the speech. Let's stick with my questions.

11 My concern is that the limitation is imposed by some  
12 other reason. I'm trying to figure out what's the best for  
13 this estate. And if the estate needs more time to market,  
14 that's what we should be focusing on. We should focusing  
15 on a buyer trying to buy a project of this size in this  
16 economy, in this debt-structure financial situation. Okay?

17 A. (Inaudible.)

18 Q. The debtor is ready, and you've told us that, but you  
19 haven't told us a potential buyer can get it done. And,  
20 boy, that sure seems more important than what you're ready  
21 to do. Let's talk about --

22 A. Well, wait, wait. Where's the question?

23 UNIDENTIFIED SPEAKER: Your Honor --

24 THE COURT: Just a moment, just a moment. We  
25 don't need commentary.



1 MR. WARNER: I apologize.

2 THE COURT: Let's ask the questions and sit down.

3 MR. WARNER: I agree.

4 Q. (By Mr. Warner) You heard the testimony of the  
5 debtors' principal, that's correct, earlier today --

6 A. Yes.

7 Q. -- the debtors' CEO?

8 And she said that CrossHarbor has had - and I think she  
9 said it twice - a year and a half of effort towards putting  
10 together a transaction with the debtor; is that right?

11 A. I mean I'll defer to her exact words, but CrossHarbor  
12 made their first acquisition up there a year and a half -  
13 two years ago - it's well-documented, and the documents  
14 have been turned over - that they negotiated a deal back in  
15 March of 2008, so --

16 Q. But they've had a lot of time for diligence, correct --

17 A. Yeah.

18 Q. -- more than --

19 A. Oh, I'm sorry.

20 Q. -- any somebody coming in today might have?

21 A. Absolutely.

22 Q. Okay. And you said -- you talked about populating the  
23 data room, and you even said you've gone to CrossHarbor as  
24 well as Credit Suisse and asked what else should be in  
25 there, correct?

1 A. And the committee, I believe.

2 Q. Okay. And I'm just not sure how it's realistic to ask  
3 CrossHarbor what else should be in there unless you know  
4 that everything they have is in there. Wouldn't that be  
5 better?

6 A. Well, no. I mean isn't -- they have proprietary stuff.  
7 I don't have a right. Just like -- I mean Credit Suisse  
8 has asked me, "Put in CrossHarbor's proprietary stuff."

9 And I've told Mr. Yankauer, "I have no more right to  
10 put their proprietary stuff in the data room than I have to  
11 get a confidential file from Credit Suisse and post it or I  
12 have to put the minutes of the unsecured creditors  
13 committee that's confidential in the data room. I don't  
14 have any right to put anything in that data room that's not  
15 the debtors' or that's not publicly available."

16 And so that's what I've attempted to do, is everything  
17 that is properly there -- and I've included putting stuff  
18 there that is highly sensitive and highly confidential.  
19 And I'm trying to do that out of -- again, everything is a  
20 balance. I try to do that with appropriate safeguards.  
21 But the conservative -- the easiest thing to do is not put  
22 half that stuff in there.

23 Q. But are you comfortable that everything that  
24 CrossHarbor has from the debtor is in there and available  
25 to other potential buyers?

1 A. Absolutely. I mean and I've sat -- you've got the  
2 director of development here, you've got the general  
3 manager here. We spent two months with them, and they're  
4 the ones that -- I mean it's -- they're the ones that have  
5 processed this. We've got everything from the debtors, I  
6 believe, that is relevant. And if there's anything else in  
7 there, somebody let us know and we'll put it in there.

8 Q. Has Richard Ellis, CB Richard Ellis been involved in  
9 the negotiations of the CrossHarbor offer, if you will, as  
10 opposed to the bid procedures?

11 A. No.

12 Q. So why do we propose to give them any - (inaudible) -  
13 in connection with that transaction?

14 A. There's two reasons, is you cannot -- or, actually, I  
15 think it really comes down to one. You can't get a  
16 topflight investment banker or broker to work on something  
17 when a very likely purchaser is excluded from them getting  
18 the commission. They will work on a contingency of getting  
19 a deal closed, but if I elect or if they give the highest  
20 and best offer and they've marketed the property -- let's  
21 assume they brought in a buyer. Don't get -- these  
22 companies -- CB Richard Ellis, their rule is to only work  
23 on exclusives.

24 So whether I -- the standard contract that I rejected  
25 that we spent weeks negotiating was that if I take the

1 property off the market, I still owe them a full  
2 commission. Okay? We negotiated that away, we negotiated  
3 it down. So no reputable broker will work on a provision  
4 that a likely buyer, where I have the choice or the Court  
5 has the choice as to who's going to be the buyer, that that  
6 likely buyer is excluded from their commission schedule.

7 Q. Even though the buyer is already there? And that's  
8 what I'm concerned about. The buyer is already there.

9 A. That was one of my arguments for 80 basis points rather  
10 than 95. I mean I -- look, I would love to pay them zero  
11 for everything and get them to work their heart out, but  
12 that's the reality.

13 Q. Okay. Let me ask a few final questions. If you would  
14 look at the pleading, which is Docket 322, it's the  
15 pleading that -- the motion that we're hearing today on,  
16 your motion for approval of bidding procedures --

17 A. I'm sorry, what are you referring me to?

18 Q. It's the actual motion for approval of bidding and  
19 solicitation procedures. I think it's the pleading right  
20 there in front of you.

21 A. Thank you, yes.

22 Q. Okay. In the first -- in the second line, it reads  
23 you're moving this Court for an entry of order approving  
24 certain bid procedures, correct? And so what we're doing  
25 today is asking the Court to approve the bid procedures?

1 A. Yes.

2 Q. Okay. And then if you go to page 14, the line before  
3 the section starting "motion to extend exclusivity period",  
4 the last sentence reads (quoted as read):

5 "Accordingly, the debtors respectfully submit  
6 that this Court should authorize and approve the bidding  
7 procedures, including the termination fee."

8 So you're asking today to approve the procedures,  
9 correct?

10 A. Correct.

11 Q. Okay. Now, if you would, then, turn to the bottom of  
12 page 8. It says the bidding -- the last sentence starting  
13 on the bottom reads (quoted as read):

14 "The bidding procedures, as such, may be approved  
15 by the Court -- as such, may be approved by the Court will  
16 be set forth in full in the proposed disclosure statement."

17 So I'm reading this as sort of an outline, but not all  
18 the procedures. Am I reading that wrong?

19 A. Well, no, I don't -- I mean I think you're reading into  
20 it more than is there. It says (quoted as read):

21 "The bidding procedures as may be approved by the  
22 Court will be set forth in full in the proposed disclosure  
23 statement and will be provided to CB Richard Ellis and any  
24 acquisition prospects immediately following the hearing on  
25 this motion."

1 I believe what's intended by that -- and I'll leave it  
2 up to the lawyers who drafted it. I mean I certainly  
3 reviewed this, and we all commented on this. I think  
4 what's intended there is that, again, trying to go to the  
5 transparency, that what the Court approves is going to be  
6 set forth in full. It's not going to be edited; it will be  
7 set forth in full, and it's going to be given to the broker  
8 and all prospects, and it will be put in the disclosure  
9 statement.

10 I mean what we're trying to say is -- again, I mean you  
11 can -- we can try to read innuendo and insinuation into  
12 everything. We're trying to say: Whatever gets approved  
13 we're going to disclose to everybody.

14 Q. Oh, I appreciate that. What I'm trying to find out is,  
15 is what I read in this motion the full extent of the  
16 procedures, or will I read more detail when I read the plan  
17 and disclosure?

18 A. Sitting here, I'm not aware of anything that's not in  
19 here.

20 Q. Okay.

21 A. I mean but, again, just like you -- I mean, well, let  
22 me just -- you provided a good comment - I think it was  
23 you; whoever did - a good question. And I think it's going  
24 to be a good clarification to change.

25 THE COURT: Mr. Beckett, any questions?

1 Mr. Moore?

2 Mr. Patten?

3 MR. BECKETT: Yeah, I have just maybe one.

4 CROSS-EXAMINATION

5 BY MR. BECKETT:

6 Q. Mr. Greenspan, you were asked by counsel to the "B"

7 interest holders at the end of his questioning of you:

8 Could these bid procedures change depending upon the kind

9 of plan that you filed on Friday?

10 I believe your answer was "no".

11 Was your answer: No, any different kind of plan that

12 you would propose on Friday would all have the same kinds

13 of bid procedures, that these are standard bid procedures?

14 A. Correct. I mean that's what I'm saying. I can't

15 conceive of a plan that we'd file that would not be

16 suitable and that these wouldn't be the appropriate bid

17 procedures. I think if we --

18 Q. Would you say, then --

19 A. Go ahead.

20 Q. -- that they're standard in the market, that the market

21 would expect something just like this?

22 A. Yes. I hesitate to say anything's standard in these

23 because you can, you can point to a dozen different ones.

24 I think everything in these bid procedures, I think

25 everything, I think everything in them is very typical.

1 You will find them frequently in bid procedures, and I  
2 don't think anything in these -- I mean I've tried my  
3 darndest to be sure that nothing in these is considered  
4 unreasonable or out of line or would chill bidding.

5 MR. BECKETT: All right, I just wanted to  
6 clarify. Thanks.

7 THE COURT: Mr. Moore.

8 MR. MOORE: I'll try to be quick.

9 CROSS-EXAMINATION

10 BY MR. MOORE:

11 Q. Mr. Greenspan, we heard about the additional  
12 collateral. You stated that was your requirement?

13 A. Yes, so that we could have apples-to-apples bidding.

14 Q. Okay. And it's the estate representatives who make the  
15 determination as to the value of that; is that correct?

16 A. Correct.

17 Q. It's not CrossHarbor?

18 A. Correct.

19 Q. Okay. Now, one thing I'm confused about is - I wasn't  
20 aware of it - you testified that there was a request to  
21 extend the Friday deadline. Do you know who made such a  
22 request to CrossHarbor?

23 Because I'll tell you, frankly, I'm not aware of it.

24 A. I think during the discussions -- I mean, yeah, during  
25 the discussions, I think I probably had asked, "Let's just



1 push everything off." And the answer was "no".

2 Q. Frankly, I would have been delighted, but I figured  
3 that would generate another round.

4 A. It would.

5 Q. In any event, again, the benchmarks we have are those  
6 that were proposed originally by Credit Suisse?

7 A. Correct.

8 Q. And, if anything, the only thing we're doing is adding  
9 another 30 days at the end, correct?

10 A. Well, I think that's, I think that's -- I consider that  
11 a major accomplishment. I think that's significant.

12 Q. Okay. Well, that's the only difference that you're  
13 aware of, okay.

14 Now, with respect to an acceptable plan, you and I have  
15 had a lot of discussions about that. And your position  
16 throughout this has been that, "It's not an acceptable plan  
17 with us; it's an acceptable plan," correct?

18 A. Correct.

19 Q. And it's your position that as long as you've proposed  
20 a plan that addressed the issues of CrossHarbor, that you  
21 could propose a plan with anyone, correct?

22 A. That's correct.

23 Q. Okay. You said it was your goal to have a confirmable  
24 plan. Is it your understanding we have the same goal?

25 A. I believe so. But as you well know, you and I don't

1 necessarily always agree on what's a confirmable plan.

2 Q. Correct. But, ultimately, the judge will determine  
3 that. And my next question was going to be: If we don't  
4 have a confirmable plan, what is it that CrossHarbor gets  
5 under these procedures other than anxiety?

6 A. I don't think you get anything. I don't think -- the  
7 only time you get any reimbursement or an overbid is if  
8 there actually is a successful overbid. If there is not a  
9 confirmable plan, you get zero.

10 Q. And we eat all of our costs in the meantime, correct?

11 A. That is historic and prospective, yes.

12 Q. Okay. You were asked about Credit Suisse being a  
13 stalking-horse bidder. Would you have rejected that notion  
14 if they offered it to you?

15 A. Not at all.

16 Q. Okay. In my years of experience, I've never seen it.  
17 Have you ever seen a secured lender be the stalking-horse  
18 bidder in a Chapter 11 case?

19 A. No. It's usually the antithesis of what they -- they  
20 sit there with -- they can bid.

21 Q. Okay. When you were testifying concerning marketing,  
22 you were testifying concerning marketing to date; is that  
23 correct?

24 A. Correct.

25 Q. And these procedures contemplate that there will be a

1 continuing period of marketing for what? About two and a  
2 half months; is that correct?

3 A. Yeah, two-plus months.

4 Q. Okay. And you testified concerning a disagreement you  
5 and I had with regard to CB Richard Ellis and the marketing  
6 procedures in January; is that correct?

7 A. Yes.

8 Q. And is it fair to say that my disagreement was of the  
9 notion with respect to the late January deadlines?

10 A. It's late. What are the late January deadlines?

11 Q. You talked earlier about the fact that -- and you were  
12 pointed to a tickler, or whatever, a teaser that had a  
13 deadline for people to submit bids to support the plan at  
14 the end of January, and the like.

15 A. Oh.

16 Q. Wasn't our discussion with respect to whether it made  
17 any sense to have CB Richard Ellis go out and try to market  
18 this asset for a period of three weeks?

19 A. Well, we've, of course, had that discussion, but  
20 also -- no you, you believed it -- yeah, beyond that. I  
21 mean you did believe that it was a default under the DIP,  
22 and I think you probably still believe there's a default  
23 under the DIP to do that.

24 Q. But I'm talking about the substance of our disagreement  
25 with respect to the marketing process. Do you recall me

1 making the statement that I couldn't sell my house in three  
2 weeks?

3 A. Oh, correct. I mean we all recognize that this is a  
4 much better -- when I see "we", I think you believe and  
5 your client believes, I certainly believe, that we will get  
6 a much more robust marketing process doing this than had we  
7 tried to get a broker involved in early or middle January  
8 for a plan that has to be filed this Friday.

9 Q. So the context wasn't we were trying to, we were to  
10 prevent marketing; it was a disagreement as to what would  
11 be acceptable to everyone here and the Court. Is that  
12 correct?

13 A. Well, that was one element. But you also did believe  
14 it was a violation of the DIP.

15 Q. Okay. Now, with respect to the retention of CB Richard  
16 Ellis, we didn't preclude you from getting CB Richard Ellis  
17 retained prior to today, did we?

18 A. No, not at all.

19 Q. Our suggestion was: We go ahead and get them retained,  
20 they prepare their marketing materials, and we be ready to  
21 go on Friday or Monday. As soon as the plan was filed, we  
22 go forward.

23 A. That is correct.

24 Q. And that would maximize the marketing period?

25 A. That is correct.

1 Q. Now, the four brokers that you solicited to or you  
2 spoke to with respect to selling this, they understood the  
3 marketing period; is that correct?

4 A. Well, no. I mean when you say "understood the  
5 marketing period" -- I mean I initially went to them with  
6 the proposal, and I did get proposals from them to sign  
7 them up in late December or January and try to go to market  
8 then.

9 And as I said, that was, that was prior to -- I started  
10 that just virtually immediately after the DIP hearing and  
11 negotiated that through December, that that was when -- was  
12 still considering doing that. And so that was my original  
13 negotiations with them. Once it became clear that that was  
14 not going to be a way to get the best value in here and was  
15 not going to be a way to run this to a maximum benefit, I  
16 then advised them - (inaudible) - what I -- in my mind, the  
17 finalists that we would be going to a plan with --  
18 attempting to go to a plan with plan solicitation  
19 procedures.

20 Q. My point was only going to be that the brokers  
21 understood there was a limited marketing period; is that  
22 correct?

23 A. Yes, they did.

24 Q. And they were all prepared to undertake this, given  
25 that marketing period; is that correct?

1 A. All four were willing to undertake this. I told them  
2 it was going to be a two- to three-week marketing period.

3 Q. Okay. Well, now it's two and a half months.

4 A. That's correct. I mean they, all four, were willing to  
5 do it under what was substantially more extreme conditions.  
6 All four were willing to, I think, bust their tail to get  
7 it done.

8 Q. And none of them were going to get compensated other  
9 than, perhaps, a disappointment fee unless they succeeded;  
10 is that correct?

11 A. That's correct if anybody thinks this disappointment --  
12 this disappointment fee is not going to motivate them to do  
13 anything. They were only doing it if they thought they  
14 could actually get a deal done.

15 Q. Did anyone refuse to propose on it because of the  
16 marketing period?

17 A. No, all four, all four agreed to propose. I got some  
18 resistance from one and convinced them that we would do  
19 everything we could to support them. And the fact that we  
20 had a good head start would -- in the data room and the  
21 tickler would -- persuaded them to accept a three-month --  
22 a three-week process, if necessary.

23 Q. And you were asked with respect to the sharing of a  
24 plan with other parties -- has the debtor not shared the  
25 plan with the creditors committee?

1 A. We have talked to the creditors committee about a  
2 prospective plan, but there's nothing tangible there to  
3 share with them. But we have had discussions with them.

4 MR. MOORE: Okay. No further questions, Your  
5 Honor.

6 THE COURT: Thank you. Mr. Alter, any questions?

7 MR. ALTER: No, Judge.

8 THE COURT: Mr. Patten, any questions?

9 Mr. Ream?

10 MR. McKAY: Your Honor.

11 THE COURT: Oh, Mr. McKay.

12 CROSS-EXAMINATION

13 BY MR. McKAY:

14 Q. Mr. Greenspan, I think I know the answers to my  
15 questions - I hope I do - but in putting together these  
16 marketing procedures, did you consider the potential effect  
17 of an 1111(b) election being made by a class of secured  
18 creditors?

19 A. The answer is "yes", I've dealt long and hard with that  
20 issue. As I've told you, until -- I hadn't -- in  
21 connection with the plan development, and so forth, I  
22 hadn't, frankly, closed the loop with respect to these  
23 procedures or to -- how -- that that would be a condition,  
24 frankly, until you filed your, your papers.

25 Q. Okay. So you acknowledge that it is a possibility?

1 A. Correct. There's -- you know, let me make clear, there  
2 is nothing intended in these procedures to in any way  
3 preempt, forestall, take away any rights under the plan or  
4 the code.

5 Q. And I guess that's my next question: You haven't had  
6 discussions - I know you can't disclose everything you've  
7 discussed with the attorneys, I guess - but that this would  
8 be a sale of Credit Suisse's collateral or any other  
9 secured creditor's collateral that would cut off their  
10 1111(b) election rights?

11 A. Again, it's specifically designed -- this is not a  
12 363-style sale. And I think every right they have under  
13 the code is fully preserved.

14 Q. So you're concerned about the credit bid potential in a  
15 363 sale. I assume that there was some weighing of  
16 whatever chill might be put on bidding by an 1111(b)  
17 election possibility as opposed to credit bid rights and  
18 maybe concluded that it -- that you thought the eventuality  
19 of an 1111(b) election was remote, perhaps, and --

20 A. Well, yeah, I mean I do think it's remote. And, again,  
21 we can't let the perfect be the enemy of the good in  
22 progress. But I don't have any right to take away their  
23 1111(b) election. I wouldn't ask them to give that up. I  
24 talked to -- I mean, frankly, I've talked to Credit Suisse  
25 and I've discussed with them the issue of credit bid



1 chilling out in the market.

2 And I've been upfront with them. I said, "I don't  
3 expect you to give up your -- but is there anything you can  
4 do, is there anything the lenders, secured creditors, would  
5 be comfortable with that would allow me to allay the  
6 concerns of the marketplace?"

7 And in that context, there is nothing that they offered  
8 and there's nothing that I could really think of that they  
9 would be willing to do that would do it. I think the  
10 prospect of an 1111(b) election is there. It's always  
11 going to be there. I think it's unlikely, but that's --  
12 it's what Congress designed. That's their ultimate  
13 protection under the code and under the plan.

14 Q. Okay. But you can understand somebody reading  
15 Paragraph N in the proposal with regard to if the Court  
16 concluded that Credit Suisse had the right to credit bid, I  
17 mean that's a term we generally associated with a 363 sale,  
18 correct?

19 A. Well, that's correct.

20 Q. Okay. And I guess I say that to point out why I wanted  
21 to clarify that with regard to the proceedings today.

22 A. Correct.

23 Q. Now --

24 A. We're -- I'm sorry.

25 Q. -- with regard to the first part of the U.S. Trustee's

1 objection, you don't view the approval of these procedures  
2 as going down a road toward a de facto consolidation of  
3 these cases that somehow can't be undone?

4 I mean you've considered that these are separate  
5 estates and that that's something that will have to be  
6 dealt with in due course?

7 A. That's absolutely correct. The whole concept of this  
8 is to, to create a valuable estate. The allocation --  
9 whether it's one estate or three estates. And the  
10 allocation between the secured and the unsecured is going  
11 to be left to a later day.

12 And I mean, quite frankly, I think we're going to do a  
13 proposal. We're going to propose how to deal with that in  
14 the disclosure statement and plan. But there's nothing in  
15 these bidding procedures that is intended in any way,  
16 shape, or form to affect that or reflect on that.

17 Q. Thank you, Mr. Greenspan.

18 MR. MCKAY: I have no further questions.

19 THE COURT: Mr. Ream?

20 MR. REAM: Thank you, Your Honor. I'm happy to  
21 say I only have one issue.

22 REDIRECT EXAMINATION

23 BY MR. REAM:

24 Q. It's an issue of fact I want to make sure that we're on  
25 the same page about, Mr. Greenspan.

1           You testified in response to one of the questions, I  
2 believe, of Credit Suisse that the, the CrossHarbor  
3 definitive agreement will be filed at the same time as the  
4 plan. Are you certain that that's an appropriate  
5 recollection of what the plan currently states?

6           A. I guess I can't be sure of that, can I?

7           Q. Is it possible that the definitive agreement with  
8 CrossHarbor will be filed just 5 to 10 days before the  
9 disclosure statement hearing? Does that refresh your  
10 recollection?

11          A. Actually, that does. I mean that's what's presently  
12 being contemplated.

13                   MR. REAM: I have no further questions, Your  
14 Honor.

15                   THE COURT: Okay. You know, Mr. Greenspan, this  
16 is just for clarification because there was a little  
17 confusion earlier - and I know you can explain it very  
18 quickly just so there's no lingering confusion - but: On  
19 the subset of property of what the debtor owns, does the  
20 debtor own the lodge?

21                   THE WITNESS: Yes, Your Honor.

22                   THE COURT: Okay. And the ski lift?

23                   THE WITNESS: Yes.

24                   THE COURT: Okay. And then there's some acreage,  
25 as well, that goes along with the lodge, etc.? Why don't

1 you tell me what the subset is that Debtor owns.

2 THE WITNESS: Well, I mean, essentially, the  
3 debtor, the debtor owns everything that hasn't been sold or  
4 conveyed to someone else. I mean the debtor owned  
5 everything, and the debtor has sold 300-some-odd lots to  
6 individuals or builders and has sold, I believe, the 160  
7 acres that are called the "the compound" or "the  
8 settlement". And so other than the lots that have been  
9 sold -- and that was just a big lot. I mean it's a  
10 160-acre lot. Other than those lots, the debtor owns  
11 everything: Personalty, realty, and intangibles.

12 THE COURT: Okay, okay. And we've got the golf  
13 course lots that, that may be contributed by CrossHarbor?

14 THE WITNESS: Correct. Among the 300-some-odd  
15 lots that have been sold were those golf course lots.

16 THE COURT: Yes. And also, then, we have the  
17 property, the compound that Ms. Blixseth has, that she's --

18 THE WITNESS: That's correct. And then also,  
19 just so -- Your Honor, just so you understand, from what  
20 I -- when those lots were sold to CrossHarbor, that  
21 transaction had to be presented to Credit Suisse because  
22 that land was encumbered by their loan.

23 THE COURT: And they had released.

24 THE WITNESS: And they agreed -- they looked at  
25 the transaction, they agreed to the release, and Credit

1 Suisse, I believe, actually got a significant paydown on  
2 the loan.

3 THE COURT: Okay.

4 THE WITNESS: So I mean that was -- that's a  
5 long-time-ago transaction that occurred -- I think it  
6 occurred in '07 after the loan was -- in '06 or '07 after  
7 the loan was recorded with their release of the  
8 collateral --

9 THE COURT: Okay.

10 THE WITNESS: -- and long before this.

11 THE COURT: Okay. And the lodge is unsecured?

12 THE WITNESS: Well, the lodge is actually -- the  
13 lodge is not secured by the -- there's --

14 THE COURT: By Credit Suisse.

15 THE WITNESS: Correct. There's about a  
16 \$4 million loan on the lodge to a different -- to America  
17 Bank, a different secured creditor.

18 THE COURT: Owed to American Bank?

19 THE WITNESS: Yeah.

20 THE COURT: Okay, thank you.

21 THE WITNESS: You're welcome.

22 THE COURT: Mr. Patten.

23 MR. PATTEN: Your Honor, I think there's been  
24 prior testimony in this case that Ms. Blixseth's 160 acres  
25 was never owned by the Yellowstone Club and has never been

1 part of the Yellowstone Club. It's within it, but it's  
2 not -- it wasn't sold by the Yellowstone Club or any of the  
3 entities to Ms. Blixseth.

4 THE COURT: This is the property that's  
5 internally enclosed by the club property to which also the  
6 easement goes to?

7 THE WITNESS: Correct. I mean multiple easements  
8 across this property, but, yes, an access easement.

9 THE COURT: Okay, thank you.

10 MR. SAUNDERS: (Inaudible, out of range of  
11 microphone) -- Your Honor.

12 THE COURT: Mr. Saunders.

13 MR. SAUNDERS: Two more questions, and they were  
14 caused by the refreshed recollection of Mr. Greenspan.

15 THE COURT: I'll give you a chance for a few  
16 questions.

17 MR. SAUNDERS: Thank you, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. SAUNDERS:

20 Q. If you could turn to Subparagraph D of the bidding  
21 procedures as to which your -- well, excuse me (quoted as  
22 read):

23 "Bidders are going to be required to submit an  
24 agreement in the form of the agreement to be entered into  
25 with the purchaser marked to show changes thereto."

1 A. Yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. Okay. And they're not going to know what they need to  
5 do, then, for quite some time yet; is that right?

6 A. That, that -- well, for some time, that is correct. I  
7 mean that's the tension of trying to get this to market as  
8 quickly as possible, as definitive as possible within the  
9 human capabilities of finite time and energy and  
10 distractions.

11 MR. SAUNDERS: No further questions.

12 THE COURT: Okay, thank you. Mr. Greenspan, you  
13 may step down.

14 THE WITNESS: Okay. Thank you, Your Honor.

15 THE COURT: Mr. Ream, did you have any further  
16 witnesses on your motion?

17 MR. REAM: No, Your Honor.

18 THE COURT: Okay. That pretty much concludes all  
19 the testimony?

20 MR. SAUNDERS: No, Your Honor. We have two  
21 witnesses in opposition to Debtors' motion or in support of  
22 our motion to compel a market process.

23 THE COURT: Well, it seems like the marketing  
24 process is about ready to start. What's accomplished by  
25 the motion?

1 MR. SAUNDERS: Well, I think the -- I agree. The  
2 testimony goes to both motions, but the testimony goes  
3 to the -- (inaudible, out of range of microphone.)

4 THE COURT: Okay. Call your witness.

5 MR. SAUNDERS: Okay. Your Honor, we'd call Scott  
6 Miller.

7 THE COURT: Mr. Miller, please come to the  
8 clerk's bench to be sworn.

9 SCOTT MILLER, WITNESS, SWORN

10 THE COURT: You know what? Mr. Saunders, I'm  
11 going to ask you: How long do you think your witnesses  
12 will take?

13 MR. SAUNDERS: Mr. Miller, his direct examination  
14 might take 20 minutes.

15 THE COURT: And your other witness?

16 MR. SAUNDERS: I wanted to call Ms. Blixseth for  
17 five.

18 THE COURT: And are all of you going to  
19 cross-examine?

20 UNIDENTIFIED SPEAKER: Probably.

21 THE COURT: Probably? Well, let me just lay it  
22 out to you real bluntly: I'm real tempted, if it's going  
23 to take up that kind of time, to continue this until --  
24 when do I finish with preliminaries tomorrow?

25 THE CLERK: Twelve-thirty.



1           THE COURT: Twelve-thirty until one o'clock.  
2   You've probably all missed your plains out of Butte anyway.  
3   That's my thought. Because if we're going to -- given  
4   what's happened today so far, I would suspect we're going  
5   to be here until close to eight with cross-examination and  
6   redirect. And it's just my, my feeling. Correct me if I'm  
7   wrong.

8           UNIDENTIFIED SPEAKER: Your Honor, I doubt that  
9   cross will take much time, so -- I would just as soon  
10   finish now.

11          UNIDENTIFIED SPEAKER: And, Your Honor, you may  
12   not be as familiar with this sort of cutback flight  
13   schedule, but if we start at 12 tomorrow, even if it just  
14   goes for an hour or two, people will not be able to fly out  
15   tomorrow, either.

16          THE COURT: Oh. Well, we enjoy having you here.  
17   Have you ever thought about residence?

18          UNIDENTIFIED SPEAKER: More importantly, Your  
19   Honor, actually, we are scheduled to be working on the plan  
20   all day tomorrow.

21          THE COURT: I fully understand, but we have to  
22   get through the testimony, as well. Without objection, I  
23   will go later.

24          MR. SAUNDERS: I appreciate that, Your Honor.

25          UNIDENTIFIED SPEAKER: Thank you, Your Honor.

1 MR. SAUNDERS: May I approach?

2 THE COURT: You may.

3 DIRECT EXAMINATION

4 BY MR. SAUNDERS:

5 Q. Mr. Miller, could you state your full name for the  
6 record, please?

7 A. Scott Miller.

8 Q. Okay. Do you have a job, sir?

9 A. Yes.

10 Q. What's your job?

11 A. I'm a managing director at Jones Lang LaSalle.

12 Q. And what are your, what are your responsibilities in  
13 the position of managing director at Jones Lang LaSalle?

14 A. I lead a team of 15 people out of Chicago that sell  
15 development rights throughout the nation.

16 Q. Okay. What do you mean by "development rights"?

17 A. Land in search of an alternative use, land that's been  
18 entitled for vertical development.

19 Q. Okay. Could you summarize for the Court briefly your  
20 educational and professional experience relating to real  
21 estate?

22 A. Sure. I have a graduate degree, a master's in  
23 real-estate appraisal and investment theory. I've spent  
24 over 20 years in real estate, the first 6 years with a  
25 national syndicator and then with a real-estate investment

1 bank learning their property management, an asset  
2 management group, and then 7 years with a real-estate  
3 investment bank capitalizing development deals across the  
4 country, and the last 4 with Jones Lang LaSalle monetizing  
5 development rights.

6 Q. Okay. And has Skadden-Arps engaged you to testify here  
7 today?

8 A. They have.

9 Q. Are we paying you?

10 A. Yes.

11 Q. How much have we agreed to pay you?

12 A. Thirty-eight hundred dollars a day plus expenses.

13 Q. Okay. Could you take a look at your deck here starting  
14 at page 5 --

15 A. Sure.

16 Q. -- and just briefly summarize what it appear -- what it  
17 is that appears on page 5 through 17 of your deck?

18 A. Sure. I mean, basically, within this deck are case  
19 studies of prior transactions that we have taken to the  
20 market, and many of them successfully completed. The first  
21 three, you know, are probably most applicable to, you know,  
22 the subject matter today. The first one was the Four  
23 Seasons - Hualalai. It was, you know, a 243-room Four  
24 Seasons hotel that was on leased land. It had a golf  
25 course and a very substantive club component to it. The

1 deal traded at, you know, roughly \$540 million.

2 The next one is the Maui Prince resort in Makena,  
3 Hawaii. That was an 1800-acre development. It had a  
4 310-key hotel on it. The preponderance of value in that  
5 deal was in the development rights in the 1300 acres  
6 surrounding the core resort. That traded, again, for  
7 roughly 575 million.

8 THE COURT: These are all public resorts?

9 THE WITNESS: Yes.

10 THE COURT: Not private?

11 THE WITNESS: Correct.

12 THE COURT: Okay.

13 THE WITNESS: And then the last one that's  
14 probably very applicable is a project down in Rocky Point  
15 or Puerto Penasco, Mexico. It's a three-hour direct drive  
16 south of Phoenix. We sold that on behalf of Alliant  
17 Energy. It was a development that had all of the  
18 horizontal infrastructure in place but none of the  
19 vertical. There was no vertical development actually  
20 completed other than nine holes of a Jack Nicklaus course,  
21 but it was one in which it was a partially-completed  
22 development.

23 MR. SAUNDERS: Your Honor, at this time, I ask  
24 that Mr. Miller be qualified as an expert in the marketing  
25 and sale of high-end resort properties.

1 THE COURT: Any objection?

2 UNIDENTIFIED SPEAKER: So stipulated.

3 Q. (By Mr. Saunders) Mr. Miller, could you begin --

4 THE COURT: Just a moment. I guess I'm  
5 wondering: Are we dealing with a high-end resort here?  
6 This is a private club. I mean he may be an expert on  
7 resorts, which I don't have a problem with qualifying him,  
8 but does he, in fact, have the credentials on a private  
9 resort -- private club, I mean.

10 MR. SAUNDERS: I can ask him.

11 THE COURT: I mean --

12 Q. (By Mr. Saunders) Mr. Miller, do you see --

13 A. Well --

14 Q. Or what differences do you see --

15 A. -- essentially all of these have a private component.  
16 The hotels are public, but the residents and the club  
17 memberships are private. So both on the Four Seasons, the  
18 Maui Prince --

19 THE COURT: But this is an exclusive private  
20 club.

21 THE WITNESS: Hm-hmm.

22 THE COURT: I mean I don't know what the purpose  
23 of your testimony will be. Maybe it's alternatives to  
24 whatever. But I guess I'm going to reserve until I hear a  
25 little bit more in your questioning.

1 MR. SAUNDERS: Okay.

2 Q. (By Mr. Saunders) Mr. Miller, starting at page 19 of  
3 your deck, could you describe what, in your opinion, is the  
4 right way to market a property like the Yellowstone Club in  
5 order to maximize the sale proceeds?

6 A. Well, I think it's really to get in and understand the  
7 asset; create the picture; paint the picture as to how to  
8 best maximize sale proceeds through this and through a, you  
9 know, a very well-orchestrated, timely marketing; paint  
10 that picture of what that property is, how it sits within  
11 marketplace; and maximize the value of the brand.

12 You know, I think there's some key components in doing  
13 that. You have to create aggressive yet defensible  
14 assumptions when you're marketing this. You're really  
15 leveraging one's own market knowledge of the individual  
16 profit centers within the overall development to obtain the  
17 highest purchase price. You want to expose this as broadly  
18 as possible, internationally if possible. And then you're  
19 really trying to demonstrate through your marketing  
20 materials and your level of knowledge of this on a  
21 successful execution that will drive the most value back  
22 into the land, that which you're selling.

23 You know, I think when we really get down to it, you're  
24 trying to remove as much a perceived risk as possible.  
25 You're wanting to get people comfortable that the

1 environmental matters that are associated with this are --  
2 can be aggressively managed or minimized, the entitlements  
3 and permitting are such that one can get in and get an  
4 execution done aggressively.

5 Understanding what those infrastructure costs are in  
6 order to take the project from its current position through  
7 final execution is imperative; and then understand and  
8 convey, you know, what is this property's competitive -  
9 (inaudible) - within its competitive set. I mean I think,  
10 really, the long and short of it is: Really, you're  
11 wanting to create marketing materials such that you're  
12 really putting this in its best light.

13 It's a process that -- you are going through a very  
14 structured process so that everybody's comfortable with  
15 those individual steps. You're having that premarketing  
16 underwriting that I've talked about. You've got an  
17 outreach, an aggressive outreach around the world to  
18 potential investors in this type of property.

19 To give you an instance on the Maui Prince transaction,  
20 we contacted well over 300 possible investors and actually  
21 had signed confidentiality agreements of over 100  
22 participants that were then offered into or allowed access  
23 into the war room.

24 What you're really trying to do is create a fervor  
25 around the property that's encouraging a lot of people to

1 submit bids, and then you're narrowing the field and  
2 ultimately picking that winner that best meets all of your  
3 criteria.

4 Q. Mr. Miller, have you had an opportunity to review the  
5 contents of the debtors' data room in this case?

6 A. Yes.

7 Q. And what conclusion, if any, did you reach about the  
8 contents of the data room?

9 A. Well, there's an awful lot of data in there, but it is  
10 difficult to get through and really -- it's not  
11 well-organize. They could be possibly better organized,  
12 and there's really not the road map in order to exercise or  
13 maximize sale proceeds. I mean, typically, we put in pro  
14 formas, and so forth, that are aggressive yet believable  
15 that we can really drive purchase price. I couldn't find  
16 that road map.

17 Q. What do you mean in terms of presentation issues in the  
18 data room?

19 A. There is a lot of data. Individual files are numbered  
20 but they're not well-labeled. I mean it's difficult to  
21 quickly go through that and get to the core pieces of the  
22 data that you really want in order to underwrite your  
23 transaction.

24 Q. And why would that matter to potential buyers?

25 A. Well, we've got -- you know, it's my understanding we



1 have a compressed timeline. And time is money for all  
2 investors, and they're wanting to get through this due  
3 diligence as rapidly as possible.

4 Q. Okay. In your opinion, was a time span of seven or  
5 eight or nine days between the opening of the data room in  
6 mid January and the deadline for bids of January 22nd, was  
7 that an adequate amount of time to solicit proposals?

8 A. No, no. I mean I think ideally, you would want, you  
9 know, 45 to 60 days minimum.

10 Q. Okay. Have you had an opportunity to review the  
11 marketing summary that was in the data room?

12 A. Yes, I have.

13 Q. Okay. And what conclusion, if any, did you reach about  
14 that marketing summary?

15 A. It's a lot of statement of fact, is my understanding,  
16 but there's no real sale spin to it, there's no real  
17 promotion. It's just a lot of statement of pure fact.

18 Q. Okay. And how does that compare to what you would  
19 expect to see by way of a teaser or a marketing summary in  
20 your experience?

21 A. Well, you would want a much more sales-perspective spin  
22 to it and a lot more, you know, photographs, and so forth,  
23 that individual purchasers may then use as collateral  
24 materials to secure additional investors or lenders or  
25 partners in the deal.

1 Q. Okay. You've been in the court today, right?

2 A. Yes.

3 Q. What reaction, if any, did you have to Mr. Greenspan's  
4 testimony about the debtors' efforts to date to identify  
5 interested parties?

6 A. You know, the debtors' efforts to secure interested  
7 parties?

8 Q. Sure. The number of -- for instance, the number of  
9 people that Mr. Greenspan called.

10 A. Yeah. I mean four is -- I believe that was the number,  
11 four, that he actually reached out for as opposed to  
12 actually called him. You know, that's a very slim number  
13 of people. I mean, normally, you would see, you know, a  
14 team of people, you know, contacting 200, 300, 400 people.

15 Q. Okay. And is there any difference in your mind between  
16 affirmative outreach and, you know, waiting for potentially  
17 interested buyers to call you?

18 A. Well, you know, the thing that's concerning is, is  
19 that, yeah, there's public exposure of this, but, you know,  
20 when is the appropriate time for an investor to approach  
21 and inquire about getting into this deal. I mean,  
22 typically, you have a more formal acknowledgment, "Now's  
23 the time to come," and so forth. And I haven't seen that  
24 today in this.

25 So, normally, you know, to get people to spend the time

1 to underwrite a transaction of this complexity, you've got  
2 to call them, you've got to push them, and you've got to  
3 ride them through the process.

4 Q. In your experience, are there potential investors,  
5 purchasers of a property of this type who simply wouldn't  
6 be responsive to media, to general public media?

7 A. Absolutely.

8 Q. Okay. What kinds of investors?

9 A. I mean they're private individuals who want to be  
10 touched personally and to understand and have described to  
11 them, you know, what is the competitive alignment, how can  
12 they access this unique opportunity.

13 Q. Is there an international market for a property like  
14 this, in your view?

15 A. Absolutely. I mean what's been created is world-class,  
16 and there are wealthy individuals and groups around the  
17 world that would be very interested in accessing this --

18 Q. Okay.

19 A. -- not necessarily just U.S.

20 Q. What reaction, if any, do you have to Mr. Greenspan's  
21 testimony about the potential deterrent effect of the due  
22 diligence head start that CrossHarbor has?

23 A. I mean I think that that has a chilling effect on the  
24 response that one would get because you've got a party  
25 that's in, you know, a significant advantage to everybody

1 else. And so I think, you know, it really -- you know, is  
2 it ideal to have anybody this early in the exposure of the  
3 asset, the investment opportunity, to have a stalking horse  
4 in place so early?

5 Q. And do you have an opinion on that?

6 A. Yeah. I think it, I think it would deter the response  
7 because there is going to be a perception that somebody's  
8 got a favored position already at the table.

9 Q. And how, if at all, in a marketing program would you go  
10 about trying to alleviate concerns that potential bidders  
11 had about some other party having an advantage or a leg up?

12 A. Well, I think that you could expose this. You could,  
13 you know, put your call dates out for people to, you know,  
14 submit their letters of intent, their offer, and you can go  
15 through one or two rounds of narrowing the field before you  
16 actually select your stalking-horse candidate so that  
17 everybody feels like they have an equal footing coming to  
18 the table.

19 Now, you know, there still may be this issue that  
20 CrossHarbor has had a lot of lead time, but as long as  
21 somebody feels comfortable that they're going to get a fair  
22 shot at it and they're going to have enough time to fully  
23 get through the due diligence war room, then I think it's  
24 something that we can overcome, anybody can overcome.

25 Q. Is that an area where affirmative outreach is

1 important?

2 A. Absolutely. I mean it's tracking those calls, it is  
3 following up and understanding, you know, what's causing  
4 people any pause or concern.

5 Q. In your experience, do the potential purchasers of a  
6 high-end property like the Yellowstone Club all have the  
7 same business plan in mind for the property?

8 A. Absolutely not.

9 Q. Can you give the Court some examples of different kinds  
10 of business plans or tweaks on the business plan that  
11 potential purchasers of the Yellowstone Club might have in  
12 mind?

13 A. Well, I think the first one that comes to mind is, is,  
14 you know, limiting this debt component to \$70 million. I  
15 mean somebody may decide that, you know, it should be, you  
16 know, a much higher number. But maybe 70 is fixed and  
17 there's a participation with the lender on the future sales  
18 of pads, of dwelling units that the lender can participate  
19 in. All of that is, you know, prohibited, is my  
20 understanding.

21 Q. Okay. In your experience, do potential purchasers of a  
22 property like this all have the same financing structure in  
23 mind?

24 A. Absolutely not. I mean it's -- there is many, many  
25 combinations and permutations available, and favored

1 structures that people have.

2 Q. Okay.

3 A. They don't all fit within this box.

4 Q. Okay. And do you have an opinion about whether or not  
5 it is likely to maximize value for the debtors to require  
6 all potential bidders to fit within that box at this point?

7 A. No, I would not.

8 Q. Okay. Based on your experience, would it tend to help  
9 or hinder a competitive bidding process in this case to  
10 prohibit bidders from proposing a financing structure that  
11 involved more than \$70 million in debt?

12 A. I think it would substantially hinder the process.

13 Q. Okay. And based on your experience, would it tend to  
14 help or hinder a competitive bidding process in this case  
15 to prohibit bidders from making proposals that committed  
16 less than \$75 million in working capital for the  
17 reorganized debtors?

18 A. I think it would substantially hinder the process.

19 Q. Okay. And why is that?

20 A. Well, what if you get somebody that is an outlier who  
21 is wanting to bid substantially more than all of this?  
22 And, essentially, they're sitting there, "Well, you know,  
23 maybe the first go-around, or so, I don't have to go, I  
24 don't have to stretch this far."

25 I mean by kind of putting in these initial parameters,

1 you may be limiting your upside in this transaction.

2 MR. SAUNDERS: Okay. Your Honor, I've completed  
3 the substantive testimony, and I just want to know if Your  
4 Honor would like more voir dire in order to accept those  
5 opinions or --

6 THE COURT: And I'm still reserved on it.

7 MR. SAUNDERS: Okay.

8 Q. (By Mr. Saunders) Then, Mr. Miller, do you see any  
9 difference, in your experience, in the way that you would  
10 go about marketing the Yellowstone Club as a private club  
11 from the entities that were outlined in Slides 5 through 17  
12 of your deck?

13 A. No, because the first two products that I talked about  
14 have private components to it. The club is private  
15 at Hualalai, and that is very similar -- it's an exact  
16 parallelism to this.

17 THE COURT: But they also have public, as well.

18 THE WITNESS: They have a public -- but there's  
19 also a benefit for the residents, the private residents to  
20 access --

21 THE COURT: Would you use different criteria when  
22 you've got a public component and a private component?

23 THE WITNESS: Criteria around?

24 THE COURT: How you would view the property, how  
25 you would market the property. Here you've got a dual

1 component. You've got public and private in the examples  
2 you have here. In this instance, you have only a private,  
3 exclusive private component. So your market is different.

4 THE WITNESS: The players are -- I don't believe  
5 that the investors are all that different. And they're  
6 going to be down to, you know, what is the return on  
7 equity.

8 THE COURT: Okay. But you're not going to be  
9 seeing Four Seasons or Hilton or some of those that may be  
10 interested in a public and a private component?

11 THE WITNESS: Well, those are flags and  
12 management companies, and sometimes they participate in  
13 those hotels; not always. And so most of the time, these  
14 are private individuals.

15 THE COURT: But that could broaden your base.

16 THE WITNESS: It could, it could. I mean --

17 THE COURT: I'm still going to reserve. I'm  
18 going to allow cross-examination to occur.

19 MR. SAUNDERS: Thank you, Your Honor.

20 THE COURT: Mr. Patten.

21 CROSS-EXAMINATION

22 BY MR. PATTEN:

23 Q. Mr. Miller, my name is Andy Patten, and I represent the  
24 debtors.

25 A. Hm-hmm.



1 Q. Have you had any sales close in the last year?

2 A. Yes. I mean we have, we have.

3 Q. How many?

4 A. You know, it's probably north of six in the United  
5 States.

6 Q. And would these be hotels?

7 A. Yes. One's the Whitetail Lodge, you know, and Salish  
8 Lodge.

9 Q. Have any of the sales in the last year been involved in  
10 a bankruptcy?

11 A. No.

12 Q. And how many sales have you closed that were bankruptcy  
13 property?

14 A. We're only in the process on one right now.

15 Q. So to date, you've never sold property that was --

16 A. I have not personally.

17 Q. -- in a bankruptcy?

18 A. I have not personally, no.

19 Q. And the properties that you've sold have been at least  
20 partially public, and some of them have been partially  
21 private?

22 A. That's correct.

23 Q. None have been entirely private?

24 A. It's -- you know, it's unclear on Laguna Del Mar, the  
25 property in Mexico, as to whether that's going to be public

1 or private.

2 Q. Okay. Were there existing members in the club in  
3 Mexico?

4 A. Yes, there were; not many.

5 Q. Did the membership in the club at Mexico provide enough  
6 dues to pay the operating costs for the club?

7 A. Not even close.

8 Q. Have any of the properties that you've sold been ski  
9 areas?

10 A. Yes.

11 Q. "Yes"?

12 A. Yes.

13 Q. What ski areas?

14 A. I mean right now, we're in the market with the  
15 St. Regis in Aspen.

16 Q. That's a hotel, correct?

17 A. Yes, that's correct.

18 Q. At a ski area, correct?

19 A. That's correct.

20 Q. Have you sold any ski areas themselves?

21 A. No.

22 Q. Did you sign a nondisclosure agreement to enter into  
23 the data room in this case?

24 A. I don't recall.

25 Q. Other than the information in the data room not having

1 a spin for sales, was the information in the data room  
2 adequate for someone to do their due diligence?

3 A. Probably not.

4 Q. How much time did you spend in the data room?

5 A. Probably an hour and a half to two hours.

6 Q. When was that?

7 A. I would say a week ago.

8 Q. What information do you think should be in the data  
9 room that was not in the data room?

10 A. I think it would be great to have readily accessible  
11 the ability for somebody to come in and understand exactly:  
12 How far completed, you know, is the infrastructure within  
13 the development? You know, how many more dollars need to  
14 be spent? How much is -- what is one buying when they're  
15 stepping into this? What percentage of completion is the  
16 sewer system, is the water, the utilities, and so forth?

17 I didn't quite find that.

18 Q. Have you been to the Yellowstone Club?

19 A. I have not.

20 Q. And other than the hour or two that you spent in the  
21 data room last week, have you had any prior information  
22 about the Yellowstone Club?

23 A. Yes.

24 Q. What information?

25 A. I had talked to Mr. Greenspan about possibly being

1 involved in the sale of the asset.

2 Q. You were one of the brokers that Mr. Greenspan  
3 interviewed?

4 A. Yes.

5 Q. And what was your commission rate that you were asking  
6 in your negotiations with Mr. Greenspan?

7 A. Ninety basis points, and eighty basis points if  
8 CrossHarbor was the winning bidder.

9 Q. Is your firm a better position to market this property  
10 than CB Richard Ellis?

11 A. No. I think CB Richard Ellis would do a great job.

12 Q. Okay. Did I understand your testimony that there would  
13 be a -- 45 to 60 days would be the minimum time to market  
14 this property?

15 A. I think to immerse it in the marketplace appropriately,  
16 yes, I think it needs to be that minimum.

17 Q. Have you had a chance to see the motion that's in front  
18 of the Court right now, motion for bidding and solicitation  
19 procedures?

20 A. I have not focused on it carefully.

21 Q. Do you have any knowledge as to how much time there  
22 would be available for marketing should this Court approve  
23 the motion?

24 A. I haven't seen it, no.

25 MR. PATTEN: Just a minute, Your Honor.

1 No further questions. Thank you.

2 THE COURT: Anyone else?

3 Mr. Warner?

4 Mr. Moore?

5 Mr. Beckett?

6 UNIDENTIFIED SPEAKER: Nothing, Your Honor.

7 THE COURT: Mr. Moore, do you have a question?

8 MR. MOORE: (Inaudible, out of range of  
9 microphone.)

10 CROSS-EXAMINATION

11 BY MR. MOORE:

12 Q. Were you aware when you entered the data room that it  
13 required a signature to an NDA?

14 A. No.

15 Q. Who provided you the information that enabled you to  
16 access the data room?

17 A. I was working with counsel.

18 Q. Pardon me?

19 MR. CHEHI: Your Honor, if I could just clarify  
20 for the record, as was stated, he was employed by  
21 Skadden-Arps. And through Credit Suisse and Skadden-Arps,  
22 we have access to the data room, and they were working with  
23 us. And so he's covered by our confidentiality.

24 UNIDENTIFIED SPEAKER: Your Honor, our  
25 confidentiality agreement is - (inaudible, out of range of

1 microphone) - by our - (inaudible) - which is in the  
2 record, which provides access to anybody in any enforcement  
3 proceeding or -- (inaudible.)

4 THE COURT: Okay.

5 MR. MOORE: No further questions, Your Honor.

6 THE COURT: Mr. Warner, did you have anything?

7 No, okay.

8 Mr. Saunders.

9 REDIRECT EXAMINATION

10 BY MR. SAUNDERS:

11 Q. Your testimony about 45 to 60 days as a sort of minimum  
12 appropriate period --

13 A. Yes.

14 Q. -- is that before the selection of a stalking horse?

15 A. Yes, absolutely.

16 MR. SAUNDERS: Okay. Nothing further, Your  
17 Honor.

18 THE COURT: Okay, thank you. You may step down,  
19 thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Mr. Patten.

22 MR. PATTEN: Can I ask one follow-up question of  
23 Mr. Saunders?

24 THE COURT: Are you sure you want to?

25 MR. PATTEN: I will be quick, Your Honor.

1                                   RE CROSS-EXAMINATION

2   BY MR. PATTEN:

3   Q.   You've never sold property out of a bankruptcy before.

4   Did I understand your earlier testimony correctly on that?

5   A.   I've never completed a transaction, that's correct --

6   Q.   Okay.

7   A.   -- through bankruptcy.

8   Q.   Okay.

9   A.   That's correct.

10   Q.   And how many stalking-horse sales have you been  
11   involved in?

12   A.   Two.

13   Q.   And neither one of them closed? Is that --

14   A.   We're right in the process of finishing one right now  
15   for Delphi.

16                   MR. PATTEN:   Okay, thank you.

17                   THE COURT:   Were you involved with Tamarack at  
18   all -- (inaudible, talking over each other)?

19                   THE WITNESS:   No.

20                   THE COURT:   Okay.   You may step down.

21                   THE WITNESS:   Thanks.

22                   THE COURT:   Thank you.   Next witness?

23                   MR. SAUNDERS:   Your Honor, we call Edra Blixseth.

24                   THE COURT:   If you could come forward,  
25   Ms. Blixseth, I'll remind you you're still under oath.

1 I'll have you take the witness stand.

2 DIRECT EXAMINATION

3 BY MR. SAUNDERS:

4 Q. I'm sorry, ma'am, I'll try to make this quick.

5 How is it that you expect personally to be treated in  
6 the plan that you expect to file on Friday?

7 A. I'm not clear on your question.

8 Q. Okay. Do you expect that the plan that you file on  
9 Friday will involve you personally or BGI in any way?

10 A. To your first question, me personally, if I contribute  
11 the land that I personally own into the plan, then in the  
12 back end, hopefully in years down the road that will be  
13 developed and I might be able to recap something. As far  
14 as BGI goes, I knew all along going into this that BGI was  
15 not looking at probably being able to recap anything.

16 Q. Okay. But you're expecting that the plan you file on  
17 Friday will provide for at least some kind of potential  
18 equity interest for -- or upside recovery for you  
19 personally; is that right?

20 A. If I can contribute 160 acres in the heart of  
21 Yellowstone Club, yes.

22 Q. Okay. Is there any transaction proposed or that you've  
23 ask discussed with CrossHarbor that would enable you to  
24 repay your \$35 million loan from them?

25 A. Again, I'm sorry, but I'm not -- maybe I'm just tired.



1 I'm not exactly clear on your question.

2 Q. Me too. You owe \$35 million plus to CrossHarbor,  
3 right?

4 A. That's correct.

5 Q. You owe that personally, right?

6 A. That is correct.

7 Q. Okay. Have you had any discussions with CrossHarbor  
8 about how you might pay that back?

9 A. I've had discussions early on because of how -  
10 (inaudible) - was going to repay. It didn't work out. To  
11 be clear on the 35 - which you're not asking, but I'm going  
12 to answer in this way - that was to close on the MSA, which  
13 was how I got ownership and possession of BGI.

14 Of that, 20 million went to Tim Blixseth to buy him out  
15 of BGI of which he got 7 cash. And I assumed a \$13 million  
16 obligation that he had already to CrossHarbor. Eight  
17 million went to the LeMond payment. Because of the  
18 financial condition that I found myself in when I took over  
19 BGI of overdrawn accounts, things not being paid,  
20 4.7 million of that went into operating capital for  
21 Yellowstone Club. There was another 1 million, or so,  
22 somewhere along there. But then the totality of the  
23 35 million of which I personally benefitted from was around  
24 \$1 million. And that was to pay taxes that I found had not  
25 been paid from community property.

1           So, yes, I'm planning on trying to figure out a way on  
2 the 35 million to CrossHarbor, but I didn't personally  
3 benefit other than getting possession of BGI.

4 Q. Okay. Is there any transaction that's connected to the  
5 plan of reorganization that you're proposing to file on  
6 Friday or ancillary to it or related to it in any way under  
7 which you would be repaying that loan to CrossHarbor?

8 A. There is not. It's a separate and total different  
9 agreement.

10 Q. Okay. When you -- you met with Mr. Byrne on January  
11 10th in Palm Springs; is that right?

12 A. We did.

13 Q. Okay. And was anybody else there?

14 A. Quite a few CrossHarbor people, my legal counsel for me  
15 personally. I'm trying to think of the other legal counsel  
16 that was there. Ron Greenspan was not available; we talked  
17 to him right after that, though.

18 Q. Okay. Was Mr. Patten or anybody else representing the  
19 debtors, legal counsel for the debtors there?

20 A. He was, he was intermittently on and off the phone, and  
21 we talked to him. In fact, we talked to Mr. Chehi that  
22 day, as well.

23 Q. Okay. And did Mr. -- did you make a demand or did  
24 Mr. Byrne make a proposal? How did the negotiations start?

25 A. You're talking about for the plan for Yellowstone

1 Club --

2 Q. Yeah.

3 A. -- not me personally?

4 Those are two separate issues, that's the reason I'm  
5 asking the question.

6 Q. I'm sorry.

7 A. No, we just started the negotiations of what would be  
8 in the best interest of Yellowstone Club since we had to go  
9 into a Chapter 11 of how we'd put a plan forward, if we're  
10 able to do that. It was clear to them, it's been clear to  
11 them all along through either Ron Greenspan or Andy or any  
12 time I've had discussions with CrossHarbor, is that my  
13 fiduciary responsibility is first and foremost to  
14 Yellowstone Club. If they had a plan that worked that  
15 benefitted Yellowstone Club to come out of this and be what  
16 I've always envisioned to be back for the members and the  
17 community and the employees, then we were trying to put a  
18 plan together like that.

19 Q. Okay. Did you say to Mr. Byrne or anybody at  
20 CrossHarbor, "I want you to make a \$100 million bid"?

21 A. No, I did not.

22 Q. Did he say, "We're willing to make a \$100 million bid"?

23 A. We eventually got down to numbers around that they  
24 thought that they could either raise the money that we know  
25 needs to go into the company for the company to be

1 capitalized properly and for the company not to be  
2 over-encumbered like it has been since, since we did the  
3 Credit Suisse years ago. So there was talks about that,  
4 based on just a simple market plan of how many lots are  
5 going forward and what we think they could sell for and  
6 what, what we think the plan should be in order for it to  
7 be successful for Yellowstone Club.

8 Q. Did they make a proposal? Did CrossHarbor make a  
9 proposal at all in the course of this meeting about what  
10 they would be willing to invest in, in the debtors to  
11 finance a plan?

12 A. At that time, in the time you're talking about, Palm  
13 Springs, it was kind of bullet notes. It was kind of  
14 sheets of paper that people wrote on and tore up, and it  
15 was kind of back and forth like that. So no plan in  
16 writing, no term sheet in writing came out after that.  
17 Just conceptually, we had a little -- it was more than just  
18 arbitrary talk. It was a little more solid conceptually  
19 what we might try to do.

20 Q. Did anybody say "100 million"?

21 A. I don't remember if 100 million was mentioned at that  
22 time.

23 Q. Okay. When was the first time anybody said  
24 "100 million"?

25 A. I don't recall. I'm sorry.

1 Q. Okay.

2 A. We've talked -- I mean this is all I've done for 24/7.

3 Q. Was there a back-and-forth where CrossHarbor started at  
4 less than 1 million, and you said, "No, you've got to pay  
5 more"?

6 A. Oh, yes.

7 Q. Okay. Where did they start?

8 A. I don't, I don't remember. I think that maybe there  
9 was something thrown around that Ron and I both reacted  
10 quickly to of about 50. And that was early on. That was  
11 when they were putting some numbers together, and they  
12 approached us on that. And, again, I don't even remember  
13 when that was. But they immediately said that that might  
14 not be where it should start, and then they went back and  
15 we went from there. But it's hard for me to tell you, tell  
16 you exact dates or times or things because we've talked  
17 about so many different things kind of nonstop.

18 Q. Okay. When you say the 50 million was early on, early  
19 on after the Palm Springs meeting on January 10th?

20 A. Oh, no, before that.

21 Q. Okay. Did there come a time after January 10th when  
22 somebody made a bid or somebody made an ask?

23 A. It came down to in the last couple of weeks, in the  
24 last, let's say, two or three weeks of trying to come down  
25 to -- I asked CrossHarbor to speak directly, since they

1 were the ones going to be raising the money, directly to  
2 some of the other people that needed to be -- hopefully we  
3 were going to get it consensual - including Credit Suisse,  
4 including the members group - to talk to them about the  
5 plan to see if they thought that that was something that,  
6 then, they could bring back to us, bring back to Ron and  
7 Andy and me and Brad, and be able to sift it and go  
8 through. So there's been negotiations ongoing where  
9 they've come back with saying that they've got things that  
10 they think are a little more solidified after, let's say,  
11 talking to the members group.

12 Q. Okay. Sometime after the meeting on January 10th and  
13 before today, did CrossHarbor say, "Here's a piece of paper  
14 with a term sheet, an offer or a proposal for discussion"?  
15 Did they give you some piece of paper like that?

16 A. Yes, they did.

17 Q. Okay. And what was the number on that piece of paper?

18 A. The last one?

19 Q. No, the first one.

20 A. I don't remember.

21 Q. Okay. But there were several rounds of back-and-forth?

22 A. Oh, there was a lot of back-and-forth.

23 Q. Did you give them marked-up versions of that piece of  
24 paper.

25 A. Absolutely.

1 Q. Okay. What valuation analysis did you do to decide  
2 whether \$100 million was fair?

3 MR. PATTEN: Your Honor, may I?

4 THE COURT: Mr. Patten.

5 MR. PATTEN: I don't know if any of this is  
6 relevant, if any of this has to do with the bidding and  
7 solicitation motion. It seems to me we're back into the  
8 conspiracy between Ms. Blixseth and CrossHarbor and  
9 Discovery Land Company and the debtors.

10 THE COURT: Which they'll certainly be able to  
11 look at through their discovery.

12 MR. SAUNDERS: We never leave that conspiracy,  
13 Your Honor. But, no, it relates directly to the bidding  
14 and solicitation procedures that they're asking Your Honor  
15 to approve on based on this stalking-horse bid. And what  
16 I'm trying to propose is: How much negotiation or work  
17 really was there before they said, "Yeah, that is what we  
18 want to go forward with, is the stalking horse"?

19 MR. PATTEN: What relevance is there in how much  
20 negotiation there was, Judge? We have a motion in front of  
21 you. They're undoubtedly going to discover all of the  
22 conversations that anybody had between the debtor and  
23 Ms. Blixseth and CrossHarbor. And it's really got -- it's  
24 getting late, and we're way off track of what motion is  
25 before the Court.

1 THE COURT: Mr. Saunders.

2 MR. SAUNDERS: Your Honor, I've already moved off  
3 the negotiations and, I started to ask the next question  
4 about the valuation. And I'd like to just ask the CO of  
5 the company what basis she has to think that \$100 million  
6 is fair for the sale of the equity of these debtors.

7 THE COURT: I'll let you ask the question.

8 MR. SAUNDERS: And as soon as we're done on that,  
9 I'll be done.

10 THE COURT: Okay.

11 Q. (By Mr. Saunders) Ms. Blixseth, what basis do you have  
12 to believe that \$100 million is a fair price for the sale  
13 of the equity in the debtor?

14 A. I think in this marketplace and with the troubles that  
15 Yellowstone Club has had in the last couple of years from  
16 the perception in the marketplace as well as what's  
17 happened in the global market, that looking at what  
18 Yellowstone Club can bear as a -- as credit as well as what  
19 Yellowstone Club needs to raise in order to go forward and  
20 make it viable for the infrastructure and the capex and the  
21 other things that we need to do, that number seemed to be  
22 the number that made sense with the overall business plan.

23 Q. Did you have any investment banker or a valuation  
24 expert or appraisal give you a view on the fairness of that  
25 number?



1 A. We used our, our CRO; and Brad; and the people that we  
2 have; Discovery Land, who is, is credible in the management  
3 and the overhead, and that kind of thing, of a lot of other  
4 clubs. And we put all that together.

5 Q. Okay. And did it --

6 A. Did we hire someone separate? "No" is the answer.

7 Q. Okay. And none of those people gave you a fairness  
8 opinion, right?

9 A. Gave me a fairness opinion?

10 Q. Right. None of those people gave you an opinion that  
11 says: In the opinion of FTI --

12 A. I did not --

13 Q. -- Discovery Land, or --

14 A. I did not request one nor was I given one.

15 Q. Okay, thank you.

16 MR. SAUNDERS: Nothing further, Your Honor.

17 THE COURT: Thank you. Mr. Warner.

18 MR. WARNER: Real quick, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. WARNER:

21 Q. You talked about the \$35 million that's the secured  
22 obligation to CrossHarbor. Is that secured by the 160  
23 acres?

24 A. There's some security of that, yes.

25 Q. So the 160 acts as collateral for it or only a portion

1 of the 160?

2 A. Only a portion.

3 Q. Okay. And you're going to contribute the 160 under the  
4 plan to whomever the buyer is, correct?

5 A. If another buyer came up and said, "Could we negotiate  
6 that?" I would negotiate, I would talk to them about that.

7 But no other buyer has presented that to me, so --

8 Q. Okay. So I just wanted to make sure, because I'm  
9 confused. So if CrossHarbor is the proposed buyer under  
10 this \$100 million plan, you, in addition, will contribute  
11 the 160 acres to NewCo?

12 A. Yes, I would contribute that. And they would be  
13 contributing the golf course lots that they purchased.

14 Q. As collateral for the notes?

15 A. As additional collateral -- as additional land going  
16 back to Yellowstone Club.

17 Q. Will the 160 also be collateral for the \$70 million  
18 notes?

19 A. Everything going back in is collateral. Because it's a  
20 NewCo, so everything going back in -- I was trying to be  
21 clear on your question. It's not that specifically, but  
22 everything going in would be a new, a new company with that  
23 land in it and so part of that collateral, yes.

24 Q. So as I understand it, the buyer, NewCo, CrossHarbor,  
25 whatever you want to call it, right, will be issuing a

1 \$70 million note, and that will be held by the former  
2 secured lenders? That note will be secured by everything,  
3 including what you contribute, the 160 acres?

4 A. You know, I think I'm feeling a little uncomfortable  
5 answering some of these things because I don't want to say  
6 anything wrong. We haven't submitted our plan yet.

7 Q. That's fair.

8 A. We are going to submit the plan on Friday. And I'd  
9 feel much more comfortable for you to get the plan, read  
10 it, and then if you would like to ask me questions  
11 specifically, I feel like I could answer them more  
12 accurately for you.

13 Q. Okay. And so it's not a contribution by you to NewCo  
14 for any buyer; it happens to be sort of a joint transaction  
15 between you and CrossHarbor that, if this transaction goes,  
16 you will be contributing that to NewCo?

17 A. Correct. But if another buyer came and wanted to have  
18 a similar plan, I would certainly look at that.

19 MR. WARNER: That's fair, okay.

20 THE COURT: And when you refer to the 160, it's  
21 the same 160 that I asked Mr. Greenspan about, right?

22 THE WITNESS: Correct.

23 THE COURT: Okay. So the debtor doesn't own  
24 the 160.

25 THE WITNESS: No.

1 THE COURT: You own the 160.

2 THE WITNESS: Personally, yes.

3 THE COURT: Okay. Mr. Patten?

4 MR. PATTEN: No questions, Your Honor.

5 THE COURT: No questions. Any follow-up? Any  
6 redirect?

7 MR. SAUNDERS: No, none, Your Honor.

8 THE COURT: Okay.

9 MR. SAUNDERS: And no more witnesses from us.

10 THE COURT: Very good. You may step down. Thank  
11 you.

12 Okay, I think that concludes matters. I'm going  
13 to take them under advisement. I'll issue my decision.

14 MR. ALTER: Your Honor, may I? Before you --

15 THE COURT: Mr. Alter.

16 MR. ALTER: Before you close the pleadings, I  
17 just wanted to address an issue.

18 Your Honor, I wanted, for the sake of candor, to  
19 disclose to the Court an issue that at least my member  
20 group wanted to bring to the forefront of the Court.

21 We've been, I believe, dancing around a major  
22 issue in this case, and I think we need to place it out  
23 there a little bit especially as we're beginning to talk  
24 about credit bidding and 1111(b) elections. Your Honor,  
25 Credit Suisse made a loan to these debtors where 94 percent

1 of the 375 million went out the door. They took large  
2 fees, collected interest, monitoring fees, and agency fees,  
3 then they sold a lot of it off to various loan  
4 participants.

5 The over-leveraging and the application of the  
6 funds the for ultra vires purposes propelled this company  
7 into bankruptcy. Yet, Your Honor, we've been sitting here  
8 for today and for the various hearings listening to various  
9 parties be attacked; however, the direction of this  
10 proceeding hasn't proceeded to look more carefully at that  
11 transaction.

12 We know that the creditors committee has filed a  
13 piece of paper, at least, alleging that the entire  
14 transaction was a fraudulent transaction. Your Honor, it  
15 just strikes me as ironic that we're spending so much time  
16 and energy -- and it's not Your Honor's fault, obviously -  
17 the motions are brought before the Court and the Court  
18 addresses them - but yet we're spending so much time a  
19 energy assuaging the concerns of Credit Suisse as to the  
20 integrity of the one party that provided financing when  
21 Credit Suisse backed out that helped the debtors on a  
22 prepetition basis and is the one party that is legitimately  
23 interested in buying these assets and assuming the member  
24 contracts.

25 Your Honor, I firmly believe that some action

1 needs to be taken soon on behalf of the estate to defend  
2 these estate causes of action, Your Honor. And I defer to  
3 the creditors committee. I know that the creditors  
4 committee has done some investigation on this issue. I  
5 don't know where they stand on it. But I suspect that if  
6 no one takes some action, Your Honor, we will be forced and  
7 propelled to file some pleading with the Court so that some  
8 fiduciary of the estate looks at this transaction.

9 Your Honor, it's our understanding that this is  
10 not the only loan transaction that Credit Suisse has had  
11 where it's ended up in a defaulted situation in bankruptcy  
12 related to similar types of luxury resort transactions. To  
13 the extent that we are talking about credit bids, 1111(b)  
14 elections, and the further course of these proceedings, I  
15 think that issue is paramount and needs to be addressed  
16 soon by this Court.

17 THE COURT: Thank you, Mr. Alter.

18 MR. WHITMORE: One second. I'm sorry.

19 THE COURT: Mr. Whitmore.

20 MR. WHITMORE: Your Honor, Clark Whitmore on  
21 behalf of the Class B ad hoc group. I appreciate the  
22 Court's about to take this under advisement. I don't want  
23 to belabor the motion that's before the Court, but in light  
24 of the timing of the plan being filed, I was just going to  
25 suggest - and, perhaps, others might agree with this - that

1 if we were to wait until the plan were filed on Friday and  
2 then if people were given, perhaps, an opportunity until no  
3 later than Monday to file some additional pleading with the  
4 Court, if they determine it to be appropriate, pointing out  
5 how the actual provisions of the plan may have some bearing  
6 on the motion, I think that would be more in accordance in  
7 due process.

8 THE COURT: I think you're going to have that  
9 opportunity in any event.

10 MR. WHITMORE: Oh, okay. Thank you, Your Honor.

11 THE COURT: Mr. Beckett.

12 MR. BECKETT: Your Honor, forgive me, but one  
13 moment to respond to a really very eloquent comment by  
14 Mr. Alter. I appreciated his comments.

15 And, Your Honor, three weeks ago, you asked the  
16 committee to conduct a review of BGI notes. And in three  
17 weeks, Your Honor, the committee has accomplished quite a  
18 bit in that regard. The committee has looked -- with the  
19 assistance, I will say, of many other constituencies in the  
20 case. I understood the Court wanted us to reach out and  
21 talk to other people, and we have, and I express my  
22 appreciation for their assistance in this.

23 When you look at the notes, you look downstream  
24 to see where the money went and you do look upstream to see  
25 where the money came from. And so, Your Honor, indeed,

1 there was a lawsuit filed with regard to the downstream  
2 part and there is a lawsuit prepared in regard to the  
3 upstream part.

4 And, you know, there would -- and I had expected  
5 this morning coming in that if it were a leisurely day and  
6 wrapped up early, I might ask the Court for a chambers  
7 conference to discuss this, to apprise the Court of the  
8 status of it, and to talk about some events because this  
9 is -- none of this, for any of us, has been a perfectly  
10 smooth run. But it's late, and you've had enough, and I've  
11 had enough.

12 And I guess I just wanted to express my  
13 appreciation to the other parties who have assisted in the  
14 preparation of a lot of good work, and to advise the Court  
15 that we're on it, and to also advise the Court that it is  
16 very important for the committee to act, as I think you  
17 instructed us to act, independently. There are going to be  
18 people who are mad and don't want us to do something, and  
19 there are going to be people who are mad and who do want us  
20 to do something.

21 Your Honor, the committee will evaluate all of  
22 this with independence and with an eye toward the best  
23 interest of the creditors estate -- (inaudible.) Thanks.

24 THE COURT: Okay, I appreciate your report.

25 MR. CHEHI: And if I may add, Your Honor.



1 THE COURT: Mr. Chehi.

2 MR. CHEHI: Mr. Beckett and I have had many  
3 discussions about their duties, their fiduciary duties.  
4 And we're confident that the unsecured creditors committee  
5 in this case is investigating all of the issues that it  
6 should properly be investigating, including the claims that  
7 our clients are asserting in the case and all the other  
8 related issues. And we have no fear that that  
9 investigation will be conducted and it will be concluded  
10 appropriately.

11 And we're not in the least concerned about any  
12 statements of concern expressed by Mr. Alter, for instance.  
13 That will all be taken care of in due course through the  
14 course of the cases.

15 THE COURT: Okay. Thank you, Mr. Chehi. I  
16 expect nothing less. I expect all the parties to do their  
17 respective responsibilities.

18 With that, we'll be in recess.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the electronic recording of the proceedings in the  
above-entitled matter, all done to the best of my skill and  
ability.

\_\_\_\_\_  
Jonny B. Nordhagen